DOCUMENT RESUME

ED 095 745 HE 005 818

AUTHOR Bracewell, William R., Ed.
TITLE Substantial Justice on Campus: Individual Rights v. Institutional Needs.
INSTITUTION Georgia Univ., Athens. Georgia Center for Continuing Education.
PUB DATE 73
NOTE 101p.; Proceedings of a conference held on the University of Georgia campus, Athens, in November 1972
AVAILABLE FROM Center for Continuing Education, The University of Georgia, Athens, Georgia 30601 ($3.00)

EDRS PRICE MF-$0.75 HC Not Available from EDRS. PLUS POSTAGE
DESCRIPTORS *College Students; Conference Reports; *Discipline Policy; *Higher Education; *School Law; Student Needs; *Student Rights

ABSTRACT

This document reports the proceedings of a conference concerning substantial justice on campus, held at the University of Georgia campus in November 1972. Topics of concern included: balancing student rights and institutional needs; challenge from the courts; sense of justice on campus and in society; institutional justification of the existence of a campus judicial system; Michigan State University judicial system; Louisiana State University's Code of Student Conduct; the University of Wisconsin-Madison Student Judicial system; and the University of Georgia Student Judiciary: an all-student, institutional, disciplinary system. (MJM)

Proceedings

SUBSTANTIAL JUSTICE ON CAMPUS: INDIVIDUAL RIGHTS V. INSTITUTIONAL NEEDS

Edited by

WILLIAM R. BRACEWELL

THE UNIVERSITY OF GEORGIA

CENTER FOR CONTINUING EDUCATION

November 19-21, 1972

Athens, Georgia

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Athens, Georgia 30602

Printed in the United States of America

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ACKNOWLEDGMENTS

This proceedings is the record of a conference held on the University of Georgia campus in November, 1972. Conferences are a great place to gather authorities on a particular field and have them present their thoughts for people intimately involved in the profession to react. It is hoped that recording these presentations in this manner will be of value to those people who were not present in Athens and will serve as a reference source for those in attendance.

Conferences don't just happen, of course. This project started in August, and as this book goes to press the work is still not completed. Considerable effort on the part of a number of individuals went into the planning and presentation of this conference.

Dr. Charles Colbert, Miss Jane Russell, and Miss Jan Summer, who are the professional staff in the Department of Student Judicial Affairs at the University of Georgia, took the idea of this conference and did the work necessary to convert the ideas into a program. Mr. Don Gilmore, a law student at the University of Georgia, gathered all the pre-conference study material and coordinated training of the task group leaders.

Mrs. Jan Cooper, Mr. Bill Johns, and their co-workers at the Georgia Center for Continuing Education arrived early and worked late to see that all details were taken care of during the conference. Additionally, Jan Cooper developed the material for the simulation and trained the leaders. Miss Judy Durrance and Mr. Bill Phillippe, representing the Judicial Council, guaranteed that the student point of view was incorporated into the conference.

Miss Laura Smith, our departmental secretary, kept us moving and did not allow us to wander too far from the work that had to be done. While we generated material, she made it readable and put it in final form.

BALANCING STUDENT'S RIGHTS AND INSTITUTIONAL NEEDS

WILLIAM R. BRACEWELL
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Education and discipline have always gone hand in hand. Somehow our society has equated the two. Standing in the corner, wearing a dunce's cap, writing some inane sentence several hundred times, and being kept after school are natural parts of the image of secondary education. Corporal punishment meted out by a cruel, bespectacled headmaster or a "school marm" with a stick has always been a part of Hollywood's depiction of the educational experience of some young hero or heroine.

The image of colleges and universities is not much better. Here the cast includes an incredibly old, very refined lady guarding the morals of her girls as the Dean of Women. The Dean of Men, also rather old, is very stern, but has a twinkle in his eye and seems secretly to enjoy the pranks of his men.

The tragedy is that until a short time ago a large part of the population believed this image was reality and went on to demand that schools assume extraordinary responsibility for the conduct of students. Schools also believed it and accepted the challenge of controlling student conduct. How many parents have said to college deans, "If you let freshmen have cars, then I will have to buy my son a car to bring to school"? The concept of in loco parentis may have been articulated by the courts, but long before that definition was published, the idea was given birth in homes across the country.

The 1960s saw the death of the illusion and the slow erosion of the concept of in loco parentis. It came as a shock to everyone that students are citizens of this country with all the rights and privileges of citizenship. Equally shocking was the application of the Bill of Rights to the business of colleges and universities. Since Dixon v. Alabama State Board of Education, 294 F.2d 150 (1961), the rights of students have seemed to expand while the rights of institutions have seemed to diminish. What disturbed most schools was that while the rights of students had been apparently expanded their administrative responsibilities remained the same. The institution is required by its students, its faculty, and its sponsors outside to maintain an environment appropriate to its educational mission. This condition, however, may not be achieved at the expense of the rights of

the students. All the opinions written by the courts, all the articles written for scholarly journals, and all the papers presented at conferences concerned with the student-institutional relationship are really only attempts to describe the new equilibrium that must be achieved.

Dixon described a new status for students but did not detract from the authority of the institution to maintain itself. The integrity of academic institutions has not been challenged, but the relationship of the people who make up the community of scholars has come under scrutiny.

In an attempt to regain control of the campus, institutions have developed systems for adjudicating student conduct. Some schools formalized a hearing procedure and used it in conjunction with their existing rules. Another approach was to revise the rules and, at the same time, adopt a compatible court system to hear alleged violations. In rare instances the institution started at the beginning and wrote a justification for being involved in setting standards for conduct on campus, and from this statement rules and hearing procedures grew. The net result is a phenomenal variety of systems for dealing with student conduct. This variation in systems should not confuse the basic issue, however. Taking the three essential elements – 1) a philosophical justification, 2) a system of rules, and 3) a procedural system – it is possible to understand better the balance for which each campus is striving.

A Philosophical Justification

If an institution assumes any responsibility for student conduct, it should so announce and should be prepared to explain in terms of its total program why it is assuming this duty. Conversely, if the conduct of students is the responsibility of some other agency (i.e., local police), this should also be announced and explained, again in terms of the mission of the institution. The importance of this basic development cannot be emphasized enough. If the way in which individuals behave is important to the institution, the reason it is important should find expression.

Approaching this from another point of view, it can be seen that this justification is an articulation of the needs of the institution. The formula should read this way: we the students, faculty, and administrators share these objectives and responsibilities, and, in order to achieve these objectives and to fulfill our responsibilities, we must have respect for one another, a high degree of integrity, and so forth. The objectives, responsibilities, and needs of institutions will vary greatly. A professional school of medicine, pharmacy or law certainly will define itself differently from a small, sectarian, liberal arts college. Regardless of the nature of the institution, the terms needed for the

formula are probably already available in its charter or whatever document accompanied its founding. More modern statements that might be helpful may be found in the *Joint Statement on Rights and Freedoms of Students*, 54 A.A.U.P. Bull. 258 (1968), or the *General Order*, 45 F.R.D. 133 (1968), written by the Western District Court of Missouri. However it is generated, this philosophical justification is essential to all that follows.

A System of Rules

Given the needs of the institution stated in very general terms, as described above, it is now possible and necessary for a system of rules to be established. The translation should not be difficult. This collection of regulations might be called a "code of conduct" and might resemble in its complexity the criminal code of some state. On the other hand, it might be very brief and titled simply "student conduct regulations." A variety of very esoteric titles is available, but the objective is to put down a list of all conduct that might cause some disciplinary action to be taken against an individual by the institution. There are three guidelines that must be kept in mind when writing these rules.

First, the rules must be specific. The prohibited behavior must be defined precisely enough for a reasonable person to understand what conduct may not take place. In legal terms, the rules may not be vague or overly broad.

Second, the rules may not abridge a constitutionally guaranteed right. It should not be difficult to avoid abridging these rights since they are enumerated in the Constitution and its amendments.

Third, the rules must be published and made available to all to whom they apply. It certainly would not be appropriate to devise a set of rules and then fail to inform those affected.

The courts have addressed themselves to these three points. They have not ruled on the appropriateness of a regulation enforced by a school at this time, but it is suggested that rules be consistent with the educational function of the institution. That is to say, the rules should specifically protect some basic need of the institution. So, the justification discussed above is important in this regard.

A Procedural System

Mr. Tom Fischer, another contributer in this conference, in his treatise *Due Process In The Student-Institutional Relationship* (American Association of State Colleges and Universities, 1970) said, "If a talisman is needed to describe the procedural system which you hope to design, 'fundamental fairness' would be it." Students have a right to be treated fairly by the institution. The procedural system will

guarantee this right. There is no single system that can be applied in all institutions. Some schools have adopted amazingly complex systems while others are quite simple. Since due process requirements are not complex, perhaps a simpler system would be preferred. The technical aspects of procedural due process are treated completely and expertly in the articles which follow.

Let us return now to the balance that is sought by institutions when dealing with student conduct. On the one hand we have the institution composed of students, faculty, and administration, which has certain needs to fulfill its stated responsibilities. These needs are protected by the expression of certain rules governing conduct which relates to the educational function. On the other hand are the rights, not of students only but of all citizens who are a part of the institution, to be treated fairly. A system of procedures which serves to control activities by the institution against individuals guarantees fairness. The needs of the institution can be expressed, and the rights of students can be guaranteed. Those responsible for education can and will succeed in a gracious stewardship of the institution despite the many predictions of imminent doom that arose during the '60s.

CHALLENGE FROM THE COURTS

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The title of my talk today is *Challenge From the Courts;* but I think the challenge is more likely *to* me, or *to* the universities, than it is *from* the courts. The reason for the challenge to me is because, since I wrote *Due Process in the Student-Institutional Relationship,*[1] I went into other things: discrimination in the admission and placement of women who enter three professions (law, medicine and architecture); First Amendment rights of college presses; academic due process for graduate students; and a few others. In many respects, it took this conference to bring me back into the mainstream of due process for undergraduate students in college disciplinary hearings.

The challenge is also to the schools for, since the landmark decision in *Dixon* v. *Alabama* in 1961,[2] the schools have been under constant pressure (mostly from students) to grant undergraduates the full range of procedural protections required by law in disciplinary suspension and expulsion cases. Ironically, many schools have responded by giving their students more due process protections than really were required by law, unnecessarily encumbering and protracting their disciplinary proceedings, and without ever understanding what due process was all about or why students were entitled to it. A few schools, of course, have not responded fully enough.

Far from being challenging, the courts have been extremely cautious in their approach to student due process, leaving many areas entirely untouched or, at best, inadequately explained.

Indeed, if you read their opinions carefully, you will discover that what the court is saying is essentially this: we don't know how to run a university as well as university administrators do. The only issues we are litigating are the issues before us, not the general tone and temperament of the school. We will make the narrowest possible determination in order to get ourselves off the hook; and we hope that on the basis of this, the institution will be able to put itself back together along more democratic and constitutional lines.[3]

If you take all the court cases concerning student due process and put them together, they wouldn't form a kernel of the knowledge necessary to run an institution. The courts' findings are simply indications of a few things that should or shouldn't be done. They do not tell us, fortunately or unfortunately, *all* that ought to be done.

If I don't make any other point here today, I want to make this point: this is not a case of courts' chasing schools around with a legal pitchfork. Just the opposite. Schools are left largely alone to do as they please. Occasionally, however, courts are forced to enter academe—when the academy does not plan ahead, or when its planning does not take into consideration basic human and constitutional values.

Still, let us assume for the sake of this speech that there *is* a challenge from the courts. What is it? What does it challenge us to do? How has that challenge been altered and refined since the *Dixon* decision in 1961? Let us walk that distance with the courts to see what they have to say. This is a necessary exercise before we can understand the future of "substantial justice on campus."

Prior to the decision in *Dixon* v. *Alabama*, a U.S. Court of Appeals ruling in 1961,[4] the traditional court wisdom with regard to college student discipline cases was that which was aptly expressed by the court which *Dixon* reversed. That court said:

> Courts have consistently upheld the validity of regulations that have the effect of reserving to the college the right to dismiss students at any time for any reason without divulging its reason other than its being for the general benefit of the institution.[5]

This language was lifted more or less directly from *Anthony* v. *Syracuse*, a 1928 case in which a *private* school student was dismissed without benefit of either charges or a hearing.[6] The sole reason for the dismissal seems to be that the student/plaintiff was not a "typical Syracuse girl," whatever that is.

Well, that was the traditional wisdom of U.S. courts with regard to student discipline matters until 1961, and it was perpetuated clear up until the *Dixon*[7] decision by the courts' extreme reluctance to enter the field of college discipline. So you can imagine the district court's amazement when the appeals court for the Fifth Circuit quoted its opinion, said "we disagree," and then went on in a narrow two-to-one decision to lay down entirely new rules for the field of student discipline, rules which have been *de rigueur* in public school disciplinary cases ever since.[8]

The prior wisdom was essentially *in loco parentis*. That is what the above quotation is all about. It says, in essence, that colleges know best what *is* best for all of their students all of the time, and anything they do in *the school's* best interest is in the best interest of the students also— including throwing them out of school. I find that a bit hard to digest, but that is what the traditional wisdom was. That is what *in loco parentis* is all about. Well, all of this changed abruptly when the court handed down its decision in the *Dixon* case.

The *Dixon* court wasn't acting in a vacuum, however. I think that this is an important point for you to remember. We are not dealing with these student due process issues in a vacuum. There have been a great number of sociological and economic changes on college campuses since *Anthony* v. *Syracuse*. People who were sensitive to them might well have predicted the result in the *Dixon* case. In other words, colleges are not back in 1928 any longer. Student-institutional relationships are not a clear case of *in loco parentis* anymore.

A number of sociological changes have occurred just since World War II. One of the most important is that a great number of veterans entered undergraduate school on the GI Bill. In some cases, they raised the mean age of the student body to twenty-four and twenty-five years of age. They did not tend to live in dormitories, and many of them were married. This totally changed the traditional college demand for parental overseeing. After the late 1940s it never came back. The paternalistic dean who took care of "his kids" in the dorm was gone forever.

In addition, there were more municipally-based campuses than ever before. This meant there were more resources available to students outside the campus. Students were not utterly dependent upon the school for what they needed; they could get it elsewhere. As a result an increasing number of students began to engage in part-time work, which made them economically self-sufficient and showed them a different side of life from that they received in the classroom. It showed many of them the irrelevancies of what they were learning or attempting to learn. And, of course, more students commuted to school than ever before. Latest statistics show that something in the neighborhood of 70 percent of all bachelor degree-seeking students in the country commute to school. Gone are the ivy-covered buildings, and in their place is the downtown skyscraper. Obviously, the relationship between student and institution has changed dramatically. No longer are we faced with a child who has to be taken under the dean's wing. Rather, we are treated to a self-sufficient student who has grown up by the time he enters college.

So we are told that *in loco parentis* is dead,[9] and wouldn't that be lovely? If it really were, I could get it out of my speech and we could go on to the next topic; but it is not dead. There are areas of college life in which *in loco parentis* still lives—and probably ought to. I will give you just one case to prove my point: *Gardenhire* v. *Chalmers*.[10] This is a 1971 case from the U.S. District Court in Kansas. Although the principal issue in the case is one of due process, an ancillary issue is raised with regard to the university's right to enact firearm regulations. The court, in holding that the university had this right, said that "it has the inherent authority to promulgate

rules and regulations . . . [and] . . . the authority, *if not the duty*, to protect itself, its property, and other students in attendance."[11] Now, if that isn't *in loco parentis*, I don't know what is! I don't know where a university would get the right to legislate on a matter of this sort except *in loco parentis*. After all, citizens are given the "right . . . to keep and bear arms" by the U.S. Constitution.[12]

I bring this matter up simply to show you that *in loco parentis* is not as dead as some people would have you believe. It does—and, in certain circumstances, probably *should*—play a role in campus discipline. It does not, however, form the principal basis for campus discipline, as it once did.

Another rather interesting comment on this subject is made by law professors Charles Alan Wright and William Van Alstyne. They reason, and I agree, that it is hardly *in loco parentis* to throw a student off the campus.[13] After all, if you are a parent, it is hardly good parental behavior to throw your child out of the family. Let us get one thing straight, however. *In loco parentis*, as dying as it may seem, is still around.

There are other theses concerning the relationship between the student and his institution, and we should mention them here as well. Probably the most notable of the remaining theses is *ex contractu*, or the contractual relationship. In addition to *in loco parentis*, this was the relationship relied upon by the court in the *Anthony* case, which I cited before.[14] At the time of *Anthony*, it was thought that contract was principally a private school-student relationship. The thesis was that a public school did not enter into a contract with its students but that a private school did. I find that a little hard to believe. Indeed, I find the whole idea that the relationship between a student and his school consists largely of a contract a little hard to believe. As those of you with legal training know, a contract is generally drawn between two parties, or a series of completely identifiable parties, and normally covers a single subject matter. It usually consists of a document a few pages in length. Can you imagine trying to draft a contract that covers the full range of relationships between a student and his institution over a four-year period? One covering all the deans, all the professors, all the books, all the services? Staggering! I wouldn't sign it, and you wouldn't either. No, I do not think *ex contractu* adequately covers the student-institutional relationship.

That contracts might play a role, such as concretizing living arrangements, is quite reasonable. That contracts might be entered into for certain other arrangements as well is reasonable. So contracts do play a role, but they do not describe the entire relationship to my mind.[15]

A third thesis of relationship was advanced by Professor Warren

Seavey in 1957[16] and further developed in a 1966 *Kentucky Law Journal* article by Professor Goldman.[17] What these two law professors were saying, in essence, is that a university bears a fiduciary relationship to its students. By that they mean that the property of a university, its money, and skills, are held in trust for its students. At first blush, this sounds like a pretty good idea, but it loses momentum when you consider what the law requires of a fiduciary. Among other things, the law requires that an identifiable principal hold, for the exclusive use of an identified beneficiary, *all* of the trust property, and, further, that the beneficiary does not involve himself in any way with the management of that property. Clearly, this does not describe a university setting. Who, after all, are the "principals"? The trustees, the president? How many principals can there be in all? What is the definition of the "property" involved? How do the beneficiaries receive their benefits without themselves becoming involved? This is a seductive idea, but I think it falls short of what we need to describe the student-institutional relationship. There are aspects of the relationship, to be sure, which take on a fiduciary character. Scholarship trusts would be one example. I don't think it is reasonable or proper to view the entire relationship as fiduciary, however.

The last, and perhaps the most reasonable, of all the theories I will discuss here today is the Constitutional theory. It states simply that most students are citizens of the United States and as such have the rights guaranteed to them by the Constitution. Further, these rights can be fully exercised on the campus. One of these rights, of course, is the right of due process of law.

This is a very interesting theory by which to characterize the student-institutional relationship, and one with a great deal of merit. But it has its limits. We must recognize, for example, what jurists have recognized for years—that Constitutional rights will occasionally conflict, and need to be balanced. They are not absolute rights. In a recent Supreme Court case, *Cafeteria and Restaurant Workers Union* v. *McElroy*,[18] a woman, unable to get a security clearance, was excluded from her work at a naval gun factory. This was because, when the Court balanced the equities, the woman's right to the job was placed secondary to the security necessary to run the factory. The opposite result obtained in the *Dixon* case, of course. In the *Dixon* case, the student's right to due process was placed above the university's right to exclude him. In any case, balancing is going to be required. Therefore, a pure Constitutional approach to the student-institutional relationship is not going to work.

Maybe if we took all these theses and put them together we would have a decent picture of the relationship between a student and his institution, but it is my feeling that schools—and courts—spend far too much time trying to define the relationship in precise terms.

They miss the real issue, which is whether the relationship is a wholesome, progressive one, whether, in the balancing of rights and responsibilities, both the student and the school come off to best advantage. In my opinion, far too much time is spent in the philosophical back-water of "are we required to do it under the contract theory? Are we obligated to do it under the fiduciary theory?" Schools should, in my opinion, simply take a fair play approach. What is the proper balance of equities between school and student? Let's put aside for the moment what the courts might force you to do. Let's put aside what a good "fiduciary" or "contractor" would do and analyze this relationship in more human, less legal, terms.

Now that I have pointed out some of the shortcomings of the principal theories concerning student-institutional relationships and cautioned you against spending unwarranted time attempting to fathom them, it is only proper that I explain where I obtained my substitute ideas. Where do the ideas of "fair play" and "due process" come from, and how did college students become entitled to them? Well, the "fair play" idea appears for the first time in the student discipline field in the landmark case of *Dixon* v. *Alabama*.[19] The idea is further extended, however, in later judicial pronouncements.[20] The idea of "due process" derives from the U. S. Constitution, which reads in part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."[21]

The great, unanswered question—which I bring up only as an aside, although it is worthy of an article or speech in itself—is: "what 'right' is the student being deprived of?" Life? Liberty? Property? No court has ever said.

I will read to you quotations from three of the principal student due-process cases. None of them will tell you what, in terms of "life, liberty, or property," a student is being deprived of; but all will tell you that students are entitled to "due process." Please note how the courts finesse this difficult topic.

To begin, let me quote from a landmark "due process" decision which did not involve students, *Joint Anti-Fascist Refugee Committee* v. *McGrath*.[22] In his concurring opinion, Mr. Justice Frankfurter said that, "The precise nature of the interest that has been adversely affected" must be made certain.[23] In other words, we must eastablish the interest of the potentially affected party which is sufficient to bring him within the Constitution's protection. But, I ask you, does the following quotation from the *Dixon* case fill the bill?

> . . . The Due Process Clause of the Fifth Amendment . . . cannot be answered by easy assertion that, because [the plaintiff] had no constitutional right to be there in the first place, she was not deprived of liberty, or property by the

> Superintendent's action. 'One may not have a Constitutional right to go to Bagdad, but the Government may not prohibit one from going there unless by means consonant with due process of law.'[24]

Now, the issue may be "liberty," but I don't think that is what students are pushing for on campus. If that last quotation leaves you befuddled with regard to the rights which universities are bound to protect in student discipline cases, let me try another quote, this time from the *General Order* of the U.S. District Court in Missouri.[25] This in an *en banc* court decision growing out of the *Esteban*[26] and *Scoggin*[27] cases. I assume you are familiar with it. In it the court said:

> Attendance at a tax supported educational institution of higher learning is not compulsory. The federal constitution protects the equality of opportunity of all qualified persons to attend. Whether this protected opportunity be called a qualified 'right' or 'privilege' is unimportant. It is optional and voluntary.[28]

First of all, I beg to differ with the court that it [is unimportant] "whether this protected opportunity be called a . . . 'right' or [a] 'privilege'. . . . " "Rights" and "privileges" receive quite different treatment under the law. More important, though, this statement from a carefully structured decision does not solve for us what Constitutional interest of students is being sufficiently threatened to bring them within the due process clause.

Alas, the last case I will quote does not clear this matter up either. Quoting in part the *General Order*, the second *Esteban* court spoke as follows:

> Attendance at a tax supported educational institution of higher learning is not compulsory . . . whether this protected opportunity be called a qualified 'right' or 'privilege' is unimportant. It is optional and voluntary. It is also invaluable, for education is basic to a civilized society and its members.
>
> The voluntary attendance of a student in educational institutions of higher learning is a voluntary entrance into the academic community.[29]

If that clears the matter up, I guess we can move on. But I think it clears the matter up in one way only, and we should reflect on this. The court has not, in any of the quotations I read to you, indicated why due process is guaranteed to students who are "voluntarily" attending institutions of higher education, be they public or private. I don't think that that is an oversight. In fact, I think that it is virtually impossible for the courts to do so. They are so convinced that in this day and age a higher degree is a valuable right that they are

willing to substitute this gibberish for the fact that they may not be able to identify a Constitutionally protected interest. They want to, if at all possible, extend the Constitution to the campus, and their failure to come up with the proper reasons for doing so is not going to slow them down.

As I said, that was an aside. Still, I think that it is an interesting proposition, and at some point it may bear heavily on the outcome of these cases. For the moment, however, courts have avoided it. Suffice it that they have been willing to go beyond it. They have not been willing to dismiss these cases on that issue alone. They have gone beyond it to *Dixon* and a whole series of cases built on *Dixon*. These cases may be built on very thin nexus, but I seriously doubt whether any court is going to reverse them. To discuss this matter beyond what we have already done seems to me useless.

Dixon and subsequent cases seem to have firmly established that college students are entitled to "due process." Let's accept that for the moment, but let us look carefully at the facts in *Dixon* so that we are not given to an overextension of that opinion. Many of the articles that I have read dealing with a student's right to due process quote *Dixon* for virtually everything under the sun. Apple pie and motherhood—you name it, *Dixon* said it. Well, the point is, *Dixon* did not say it! Articles like that are patently misleading, and if you are unfortunate enough to be misled by them, then a court could always amaze you by returning the strict wording of *Dixon*.

The *Dixon* case involved civil rights. It was not just a garden variety "free speech" case. Moreover, it came at the peak of the civil rights movement in 1961. Further, it involved a *public* institution. I will speak a little later about the differences between public and private institutions.

Dixon was an expulsion case. It wasn't social probation, it wasn't censure, it wasn't even suspension. It was expulsion. Look for elements like that. Later on I will cite cases that do not involve civil rights, that don't involve public schools, that don't involve expulsions; and you will see that the outcome is quite different. These cases talk about *Dixon*, but they say that *Dixon* does not apply. So, be careful. Don't take a favorable decision and run with it, forgetting the facts that made it a favorable decision. Don't forget that *Dixon* was a narrow two-to-one decision when it was first handed down. The opinion of the court was only eight pages in length, and only the last page or two dealt with student due process. In addition, there was a well-reasoned, six-page dissent.

No, the *Dixon* case did not have the appearance of a landmark decision when it was first handed down, but during the succeeding years it spawned a whole series of court decisions relating to student due process. It is these decisions which have fleshed out the subject

area, and it is these decisions which I wish to draw to your attention today. If there *is* any challenge from the courts, this is where it would be.

We begin with the tiny kernel of *Dixon* v. *Alabama*. It has never been reversed, not even modified. It has been relied upon by many other courts, including the Supreme Court of the United States in the *Tinker* case.[30] Since the *Dixon* decision the law of student due process in disciplinary cases has been a steady upward trend, with one minor exception—the *Esteban* cases.

Following the *Dixon* case, not proximately but by some years, were the *Esteban* cases. There were two cases involved, a case I call *Esteban I*[31] and another I call *Esteban II*.[32] They both happened to have occurred in the same court, unlike the *Dixon* cases. The first *Esteban* case involved a student demonstration of a minor nature at Central Missouri State College. The judges of the District Court for the Western District of Missouri read *Dixon*, but they decided to do *Dixon* one better. They threw in every due process protection, *including* the kitchen sink—the right to counsel, the right to cross-examine witnesses, the right to doggone near everything a defendant would receive in a criminal proceeding. So the "rights" of students were riding high, at least until *all* of the judges for that district decided that they had better take a second look at student due process. The result of that "second look" was the now famous *General Order*.[33] It is as thoroughly researched and well written as any pronouncement in the field and is, in my opinion, the most important judicial document concerning student due process to appear since *Dixon*. Following the *General Order*, the court modified the opinions of *Esteban I* through *Esteban II*, which superseded *Esteban I*. *Esteban I*, then, represents the momentary high-water mark of student due process rights.

Frankly, I find the opinion expressed by the court in *Esteban I* quite repugnant. The idea that student discipline is akin to criminal procedure and needs to be imbued with all the same protections—the right to counsel, open hearings, juries, direct and cross-examinations, affidavits, depositions, complete court records, etc.—unnecessarily and unhappily obscures the real reason why students attend college, and why colleges exist. I would like, if we could, to lower the tone on this particular point of contention.

I have indicated before that what is at stake here is something which, if it isn't completely paternalistc, at least is not criminal, that we are talking about a relationship which is more one of harmony than disharmony. Students and administrators who view each other as protagonists and draft codes so inordinately complex that they meet and exceed every possible constitutional guarantee seem to me quite silly. It seems destructive of that peculiar kind of cement which

has characterized institutions of higher learning in the past. On the other hand, it seems equally destructive of that relationship when, eleven year after *Dixon*, some colleges still do not have the word. Some administrators still view their students—and this happens in public as well as private schools—as subjects to be acted upon, not human beings and not citizens. The word is getting around, however. I think it is advanced more by students who are willing to struggle for minimum rights and responsibilities, and minimum due process, than by those who delight in pushing their administration to the wall. The *Esteban* cases and the *General Order* have gone a long way toward spelling out where this meeting between students' rights and administrative control should occur. You should become thoroughly familiar with these rulings. We are not in the days of *Anthony* v. *Syracuse* any longer.

In the eleven years since *Dixon* the courts have done little more than to affirm it, and extend it into certain specialized areas. I want to point up a few of these areas. As indicated before, *Dixon* was approved by the Supreme Court in *Tinker*.[34] Bear in mind that when the *Dixon* decision was appealed from the Fifth Circuit to the Supreme Court on a *writ of certiorari*, it was denied.[35] When the Court denies *certiorari*, the best conclusion that you can draw is that it was not so troubled by the result that it felt it must hear the case. Although the Supreme Court was not interested in hearing it, apparently it agreed with the result in *Dixon*, for in *Tinker* it specifically approved that result.

Let's look for a minute at *Tinker* because, like *Dixon*, it is quoted for everything. Every manner of First Amendment freedom has been laid at *Tinker's* doorstep. Every manner of protest, every type of school, has been brought by loose analysts under the *Tinker* rule. So let us take a careful look at *Tinker* just as we did at *Dixon*.

First, there was no speech involved. It was a "freedom of speech" case, to be sure, but there was not any speech. Mr. Justice Fortas, who wrote the opinion of the Court, said that "the wearing of armbands in the circumstances of this case was . . . closely akin to 'pure speech' which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment."[36] The plaintiffs wore black armbands, and that was it.

There was no militancy whatever. *Tinker* has been cited to allow all forms of militancy on the campus, but there was none in that case. Furthermore, *Tinker* involved a public school, not a private school; and, because it was a public school below the college level, attendance was compulsory. If there is any place where you ought to have First Amendment freedoms it is in a situation where you do not have any choice but to be there.

Tinker involved an attempted prior restraint, rather than a re-

straint during or after the fact, and each can be dealt with quite differently by the courts. Lastly, *Tinker* involved a First Amendment freedom—probably the most important of all, the freedom of speech.

Simply stated, the Supreme Court found that the demonstrating students did not "materially or substantially" disrupt the school; and therefore their "speech" was protected by the First Amendment. Obviously, there is a reverse side to that ruling. If the students *did* "materially and substantially" disrupt the school, hypothetically their "speech" would not have been protected. So we are again back to balancing. There is no pure "right" to say what you want to say. You have that right only up to the point of "material and substantial disruption." So "material and substantial disruption" has become the rule with the *Tinker* case.[37]

Please be aware of the special facts of the *Tinker* case when you consider its application. A different result might have been obtained if the speech had been audible, or the school disrupted, or the school a private one, or the school beyond the high school level. Many of these distinctions are ignored in quoting the *Tinker* case, but they are fundamental to the application of its principles.

Since we have looked at the result in *Tinker*, and since I have twice made a distinction between public and private schools, let us begin our series of *Dixon* updates with a look at the public-private school distinction. For a long time the courts have told us that "state action" is necessary in order to apply the First and Fifth Amendments through the Fourteenth Amendment to non-federal institutions. As a result of the holdings in *Dixon* and *Tinker* we are left to believe that only those institutions which are public in nature, the activities of which constitute "state action," are going to be brought under the Constitution, while private institutions are somehow exempt. If you want to read two cases which hold this in extreme circumstances, try *Greene* v. *Howard University*[38] and *Grossner* v. *Columbia University*.[39]

In the *Greene* case we find that the U.S. Court of Appeals for the District of Columbia Circuit declined to rule that Howard University was a "public" institution, even though it was authorized by Congress and received more than fifty percent of its funding from the federal government. As a result the court implied that students of that school were not entitled to due process in disciplinary proceedings. Another such case is *Grossner* v. *Columbia University*. We all recognize that Columbia University in New York City is essentially a private institution, but did you know that approximately one-third of its operating revenue comes from the State of New York and other government sources? There is ample reason to say that there is some public intermingling and that the Constitution ought to apply, for some purposes at least, but the court did not.

Compare that, if you will, with a case earlier than either of these, *Guillory* v. *Tulane University*.[40] In that 1962 case, a court found that Tulane University, which I always thought to be a private university, was sufficiently "public" to reach the issue of discrimination in admissions. Unfortunately, this liberal decision was later vacated and a more orthodox application of the "private" school doctrine made.[41] We might well ask ourselves what tempted the first court to find that Tulane was a "public" school. Clearly, it was something a little weightier than mere discipline, which is what was involved in *Greene* and *Grossner*. *Guillory* was a civil rights case, involving "equal protection" of the laws. In that case, with far less evidence than was present in either *Greene* or *Grossner*, the court found that Tulane is a "public" institution; and due process applied.

To be sure, the court went endlessly into the history of Tulane University and found that it was founded as a public institution and only subsequently, as a result of benefaction, became a private school. But the court said *history notwithstanding*, Tulane is a "public" school. The decision was reached on the basis of two points: that there were three public members of the Board of Trustees and that it was tax exempt.[42] I submit to you that almost every "private" institution in this country would satisfy these two criteria. Regrettably, as I say, this ruling was vacated. I predict that the artificial, public-private school distinction will last a lot longer as a result. It has also obtained renewed vigor from some recent Supreme Court decisions.

Back in 1971, I was invited to the Georgia Center to address a conference on *Higher Education: The Laws and Individual Rights and Responsibilities*. The conference proceedings was published,[43] and since I don't get any money from it I guess I can recommend the booklet to you in good conscience. My speech discussed the public school-private school distinction and the fact that I think it ought to be abandoned.[44] In part I based my conclusion on the finding in *Simkins* v. *Moses H. Cone Memorial Hospital*.[45] This was a case in which *private* hospitals for a mere mercenary advantage of 33 percent (average) accepted federal grant money for hospital construction under the Hill-Burton Act. The Fourth Circuit Court of Appeals found that the hospitals, although still "private," were sufficiently involved in public intermingling to constitute "state action." The court thereupon applied the "equal protection" clause of the Fourteenth Amendment[46] and forced the hospitals to give up their practice of racial discrimination in admission and use of facilities. So you see, the court can and *will* find public responsibility and public function even in the case of "private" institutions. They found it in this hospital case, and they have found it in welfare cases,[47] but they have avoided up to the present finding it in private college cases.

I draw your attention, however, to a quote from the late Mr.

Justice Cardozo, in his extremely good book *The Nature of the Judicial Process*.[48] He wrote that "when . . . social needs demand one settlement rather than another, there are times when [judges] must bend symmetry, ignore history and sacrifice custom in the pursuit of larger ends."[49] That may come as a shock to all of you, but I do not know how the courts can be moderately concerned about society and not be subjective enough to do that.

It is clear that the situation in the *Moses H. Cone Hospital* case is not markedly different from that in the *Greene* or *Grossner* cases—and certainly not markedly different from that in the *Guillory* case. Yet you see the variations in conclusion. I had hoped by this time that the Supreme Court would have taken a case such as *Guillory*, *Grossner*, or *Greene* on a *writ of certiorari* and stated once and for all that private schools which are accepting public money, and gaining advantages from state and federal governments in many other ways, have no right to deny basic constitutional freedoms to their students. Today's Supreme Court, however, is somewhat more circumspect in its composition. Two of their recent findings, both in the last term, cast real doubt on whether we will see any extension of individual rights under this Court.

I do not know how many of you have read the *Tanner* case,[50] but it is a case in which anti-war pickets were not allowed to distribute leaflets in the interior mall and parking lot of a privately-owned shopping center. The Supreme Court said that the owners of the shopping center had the right to put the pamphleteers off this space, insofar as it was not covered by the First Amendment right to free speech. This, it seems to me, goes back on existing principle, insofar as the picketing did not "materially or substantially disrupt" the shopping center's activities.

In the second case, known as the *Moose Lodge* case,[51] a Moose Lodge licensed by the state liquor board was not required to follow the requirements of the state constitution with regard to racial discrimination. The court held, believe it or not, that "state action" was not involved. The objectives I was striving for in my article, and which I believe will eventually come, seem to be put further in the background by these latest Supreme Court decisions.

I would like to tell members of private institutions that the status of the law in that area is a little bit like the status of the law of "separate but equal" the day before the *Brown* decision.[52] I would not rely on it too much. All we need is for another good test case such as *Guillory* to make it to the Supreme Court. All we need is a sufficiently strong constitutional interest on the part of an individual in sufficiently grave circumstances where a school is sufficiently co-mingling private and public funds, and we will have a *Brown*-type decision in the area of private school student due process. That will

be a happy day for me and, I think, for most of us in higher education —because it will extend for the first time the full range of constitutional protections to students in private schools, protections which they do not now have, if I read these statements correctly.

Let me briefly run through some of the *new* issues which have blossomed in the area of student due process since the *Esteban* and *Tinker* decisions. One is presented in the case of *French v. Bashful.*[53] This is an excellent case which I hope you will read. It says, in no uncertain terms, that the measure of process which is *due* to students facing penalties less than expulsion or suspension is significantly less than that due students facing stiffer penalties.

One of the mistaken apprehensions about student due process rights after *Dixon*, and certainly after *Esteban*, was that every time a student was faced with any sort of sanction in a disciplinary hearing, he was entitled to every form of protection, right up to and including the kitchen sink. This included, many thought, the right to direct examination, cross-examination, depositions, counsel, everything. Frankly, there were no cases which held to the contrary. Both *Dixon* and *Esteban* were fairly open-ended. It took *French* v. *Bashful* and later *Sill* v. *Pennsylvania State University*[54] to indicate what the real meaning of due process was: that the processes "due" to a student in any particular set of circumstances are due to him only insofar as those circumstances are concerned, and the processes we have come to associate with expulsion and suspension simply do not apply equally to cases of social or academic probation, or censure.[55]

Another issue that has been raised is with regard to the authority of a college or university to lay down rules concerning student behavior in the first place. It takes a very poor reading of corporate law or the history of higher education in this country to come up with a proposition like that, but suffice it that *Dixon* did not make the courts' position on this subject perfectly clear. The university's right to make rules was recognized in a very collateral way, but it took the *General Order* of the Missouri court to state it in a more affirmative way. Finally, it took the case of *Gardenhire* v. *Chalmers* in 1971 to come up with the following: The university "has the inherent authority to promulgate rules and regulations and establish standards of conduct for those attending the institution."[56] If you are wondering where that authority comes from, it generally derives from the university's corporate charter. So this small measure of ambiguity has been cleared up also. I don't think that it is intelligent any longer to attack disciplinary proceedings on the lack of rule-making authority alone.

Third—and a large question left unanswered by *Dixon*—was the possibility of suspending a student without a prior hearing, what students have come to know as "summary suspension." I have heard

many, even some good, arguments against summary suspension. The fact of the matter, however, is that even if a university president waives his right to summary suspension, there are still conditions, although I must admit very *extreme* conditions, under which that right can be exercised. Still, neither *Dixon* nor the *General Order* nor *Esteban* speak to that subject. It took cases such as *Stricklin* v. *Regents*[57] and *Barker v. Hardway*[58] to indicate that in extreme circumstances, which pose an immediate, imminent and highly likely danger to members or property of the university, summary suspension is proper. This can not be a prospective danger, as was the case with *Tinker*, or even a mild danger, as was the case in *Esteban*. The difference between *Esteban I* and *Esteban II* is that there was no due process given to Esteban in the first case before he was suspended, and the court required that it be given to him. The argument that the situation was sufficiently grave to justify summary or interim suspension was rejected by the court. That argument was rejected by the court in *Stricklin* v. *Regents*, too, but they gave us guidelines which recognized that in extreme circumstances summary suspension would be appropriate—in order to protect the university, its personnel, and its property. So the courts have finally laid to rest much of the speculation concerning interim or summary suspension.

They have also spoken quite candidly about the right to counsel. Again, this subject was not mentioned by the *Dixon* court. It was not mentioned in the *General Order* either, except to say that in rare cases the right to counsel might be appropriate and that these cases would have to be judged on their own peculiar facts. The court declined to say in advance what these facts would be, but their presumption was in favor of there being no right to counsel. It took the case of *Wasson* v. *Trowbridge*,[59] a 1967 case involving the United States Merchant Marine Academy, to say that there was no *absolute* right to counsel. But that case proceeds very much on its own peculiar facts, and the facts show that no counsel was used either by the Academy or the hearing board. The cadet's counsel was rejected, and the court approved of that.[60]

French v. *Bashful*, a 1969 case,[61] gives us a little more to get our teeth into. That case did not involve a no-counsel situation across the board. In *French* v. *Bashful*, a senior law student was acting for the prosecution in a discipline case, while the student-defendant was denied counsel. The court, in reversing the result, said that the third-year law student was sufficiently better able to represent the prosecution's side of the case than the defandant was able to represent his. This created an unequal balance, and defendant's retained counsel should have been allowed. The *French* case indicated not only under what circumstances a counsel would be required but also that the court was talking specifically about *retained* counsel—in other words, counsel

retained by the student who is accused. The university has no responsibility to provide counsel for him, as would be the case in a criminal proceeding. This is another reason why student discipline hearings should not be regarded as criminal.

Charles Alan Wright made a curious comment with regard to a student's right to counsel in his very fine article, "The Constitution on the Campus," appearing in *Vanderbilt Law Review*.[62] Professor Wright was speaking of *Wasson* v. *Trowbridge*[63] when he wrote that "a leading case holding that counsel need not be allowed qualifies this by saying that this is true so long as 'the government does not proceed through counsel.' "[64] So far I agree. Profeessor Wright went on to say, however, that "if universities . . . provide their own lawyer to *assist* a tribunal, in those cases at least the student can hardly be denied the right to his own counsel, even if, as I doubt, there is no right to counsel generally in disciplinary proceedings."[65]

We have already learned from *Wasson* v. *Trowbridge* and the *General Order* that legal counsel may be required in *some* student discipline cases, though certainly not in all of them. The remainder of the statement turns on what you view as a "lawyer . . . [assisting] a tribunal" and whether you distinguish that from "the government proceeding through counsel." I do, but I fear that Professor Wright may not have done so and has muddied the waters thereby.

When I think of a "lawyer . . . [assisting] a tribunal," I think of legal counsel aiding a hearing board in the distillation of issues, weighing of evidence, etc. When I think of "the government proceeding through counsel," I think of the *prosecution* "proceeding through counsel" while the defendant has none. This was essentially the situation in *French* v. *Bashful*, and as you know the court disapproved. However, I do not interpret the "assistance" of counsel in the *deliberative* process—that is, counsel which aids only the hearing board and not either the plaintiff or the defendant and therefore does not destroy the adversarial balance between them—as requiring a right to counsel on the part of either adversary. I do not believe that this was the intent of the *General Order* or *Wasson* v. *Trowbridge*, and it certainly was not the holding in *French* v. *Bashful*. Contrary to Professor Wright's apparent conclusion, I believe that the accused student's right to counsel arises principally when the *prosecution* (university/"government") "proceeds through [the use of] counsel," and vice versa.

This problem is further exacerbated by a pamphlet of the ACLU[66] in which they state that *French* v. *Bashful* conclusively establishes the student's right to counsel in disciplinary hearings. Nothing could be more false. If you have been swept away by the ACLU's reasoning, beware. It has no basis in fact. A direct quote from *French* v. *Bashful* should clear this matter up once and for all.

> Surely, it cannot be doubted that [the third-year law student's] ability to conduct himself in a proceeding of this sort was likely to be far superior to that of the defendant who, as far as can be ascertained from the record, had no legal education or experience whatsoever. *In view of the particular and special circumstances of this case*, we . . . hold that procedural due process requires that these students be permitted to be represented by their retained legal counsel at the hearings.[67]

What the court is saying here is that the adversarial balance between the student defendant and the prosecution has been disrupted by the fact that legal training existed on one side but not on the other. The court is restoring that balance by allowing legal counsel on both sides. That is the only reason for which they are doing it. They are not announcing an across-the-board right to legal counsel.

Finally, we get to two minor subjects which I wish to mention only briefly. One is the "substantial evidence" test. When *Dixon* was enunciated, there was no indication what the rule of evidence would be insofar as student disciplinary hearings were concerned. There are several evidentiary rules in general use—"the preponderance of the evidence" and "beyond a reasonable doubt" to name just two. But were these appropriate tests for college disciplinary hearings? If they were, then college evidentiary procedures would have to be substantial indeed, because it is quite a burden to establish something "beyond a reasonable doubt." In subsequent cases, however, an equitable test was enunciated. It called for "substantial evidence." This test has now been adopted by most of the courts speaking to this issue.

The "substantial evidence" test appeared for the first time in the student due process field in *Esteban II*,[68] but is was more clearly articulated in a later case, *Sill* v. *Pennsylvania State University*.[69] In the *Sill* case the court defined "substantial evidence" as follows:

> 'Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co.* v. *Labor Board*, 305 U.S. 197, 229. Accordingly, it 'must do more than create a suspicion of the existence of the fact to be established . . . it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' *Labor Board* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292,300.
> The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.[70]

In other words, "substantial evidence" is more than just a little but

not so much that reasonable people could not differ whatsoever. Simply put, it is evidence adequate to support a conclusion; but it must be taken from the whole record, not just that portion which would unilaterally support that conclusion.

The last case I wish to draw to your attention is *Williams* v. *Dade county School Board.*[71] This case had the effect of extending the *Dixon* rule—that students' were entitled to the "rudiments of an adversary hearing"[72] before a long-term suspension or expulsion—to students in public high schools. The *Williams* court held specifically that the imposition of a ten-day suspension during a period of "considerable disruption" was acceptable, but that an additional thirty-day suspension "without benefit of an effective hearing" was not. The court found a board of education regulation which authorized the superintendent to give the longer suspension without benefit of a hearing to be violative of due process of law.

So you see the long circuitous route of the *Dixon* decision since 1961. In addition to the many refinements and extensions I have spoken of, it has now reached down to the public high school level. This is, I think, as it should be.

The courts have made their expectations known at many junctures. It is now up to the colleges to respond creatively without overreacting.

I have attempted to illustrate for you the progress of the *Dixon* decision and the progress of student due process in disciplinary hearings from 1961 to the present. I believe I have brought you up to date.

FOOTNOTES

1. T. C. FISCHER, DUE PROCESS IN THE STUDENT-INSTITUTIONAL RELATIONSHIP, American Association of State Colleges and Universities (AASCU Studies 1970/3), Educational Resources Information Center (Eric) Clearinghouse on Higher Education, (1970).

2. *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150 (5th Cir. 1961), *cert. denied,* 286 U.S. 930 (1961).

3. See, *e.g., General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education,* 45 F.R.D. 133, 135 (W.D. Mo. 1968) [hereinafter cited as *General Order*].

4. 294 F.2d 150.

5. *Dixon* v. *Alabama State Board of Education,* 186 F.Supp. 945, 951 (M.D. Ala. 1960), *rev'd,* 294 F.2d 150 (5th Cir.), *cert. denied,* 286 U.S. 930 (1961). This is the "first" *Dixon* case, a U.S. District Court decision which was reversed by the U. S. Court of Appeals (5th Circuit) in the now famous *Dixon* decision, which is cited in note 2, *supra.*

6. *Anthony* v. *Syracuse University,* 224 App. Div. 487, 231 N.Y.S. 435 (1928).

7. 294 F.2d 150.

8. I have always found it enlightening to compare the District Court (186 F.Supp. 945) and the Appeals Court (294 F.2d 150) decisions in the *Dixon* case.

9. T. C. FISCHER, *supra* note 1, at 5 n. 25.

10. 326 F.Supp. 1200 (D. Kan. 1971).

11. *Id.* at 1202 (emphasis added), quoting *Esteban* v. *Central Missouri State College*, 290 F.Supp. 622 (W.D. Mo. 1968), *aff'd* 415 F.2d 1077 (8th Cir. 1969), *cert. denied*, 398 U. S. 965 (1970).

12. U. S. CONST. amend. II.

13. Wright. *The Constitution on the Campus*, 22 VAND. L. REV. 1027 (1969); Van Alstyne, *Procedural Due Process and State University Students*, 10 U.C.L.A. L. REV. 368 (1963).

14. 224 App. Div. 487, 231 N.Y.S. 435 (1928).

15. T. C. FISCHER, *supra* note 1, at 4-5.

16. Seavey, *Dismissal of Students: "Due Process"*, 70 HARV. L. REV. 1406 (1957).

17. Goldman, *The University and the Liberty of its Students - a Fiduciary Theory*, 54 KY. L.J. 643 (1966).

18. 367 U.S. 886 (1961).

19. 294 F.2d at 155, quoting Mr. Justice Frankfurter in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 163 (1951).

20. *General Order*, 45 F.R.D. 133, 143; *Esteban* v. *General Missouri State College*, 290 F.Supp. 622, 631 (W.D. Mo. 1968).

21. U.S. CONST. amend. V. The concepts of due process have been applied to the states by the Fourteenth Amendment.

22. 341 U.S. 123 (1951).

23. *Id.* at 163.

24. 294 F.2d at 156, quoting *Cafeteria and Restaurant Workers Union* v. *McElroy*, 367 U.S. 886, 891 (1961).

25. 45 F.R.D. 133.

26. *Esteban* v. *General Missouri State College*, 277 F.Supp. 649 (W.D. Mo. 1967).

27. *Scoggin* v. *Lincoln University*, 291 F.Supp. 161 (W.D. Mo. 1968).

28. *General Order*, 45 F.R.D. 133, 141.

29. *Esteban* v. *Central Missouri State College*, 290 F.Supp. 622, 631 (W.D. Mo. 1968).

30. *Tinker* v. *Des Moines Independent Community School District*. 393 U.S. 503, 506 (1969).

31. 277 F.Supp. 649.

32. 290 F.Supp. 622.

33. 45 F.R.D. 133.

34. 393 U.S. 503.

35. 286 U.S. 930 (1961).

36. 393 U.S. at 505-06. Cf. *Cox* v. *Louisiana*, 379 U.S. 536, 555 (1965); *Adderley* v. *Florida*, 385 U.S. 39 (1966).

37. 393 U.S. at 505, 509, quoting *Burnside* v. *Byars*, 363 F.2d 744, 749 (1966).

38. 412 F.2d 1128 (D.C. Cir. 1969).

39. 287 F.Supp. 535 (S.D. N. Y. 1968).

40. *Guillory* v. *Administrators of Tulane University of Louisiana*, 203 F.Supp. 855 (E.D. La. 1962), rev'd, 306 F.2d 489 (5th Cir. 1962).

41. *Guillory* v. *Administrators of Tulane University of Louisiana*, 212 F.Supp. 674 (E.D. La. 1962).

42. 203 F.Supp. at 861.

43. University of Georgia Institute of Higher Education/Center for Continuing Education, HIGHER EDUCATION: THE LAW AND INDIVIDUAL RIGHTS AND RESPONSIBILITIES (D. Parker Young ed. 1971).

44. Address by Thomas C. Fischer, University of Georgia, June 24, 1971, Institute of Higher Education/Center for Continuing Education, in HIGHER

EDUCATION: THE LAW AND INDIVIDUAL RIGHTS AND RESPONSIBILITIES 27 (1971).

45. 323 F.2d 959 (4th Cir. 1963), *cert. denied*, 376 U.S. 938 (1964).

46. The Fourteenth Amendment of the U.S. Constitution reads, in part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV.

47. See, 19 DEPAUL L REV. 552 (1970).

48. B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (1921).

49. *Id.* at 65.

50. *Lloyd Corporation, Ltd.* v. *Tanner*, 407 U.S. 551 (1972).

51. *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972).

52. *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954).

53. 303 F.Supp. 1333 (E.D. La. 1969).

54. 318 F.Supp. 608 (M.D. Pa. 1970).

55. *Id.* at 617.

56. 326 F.Supp. 1200, 1202 (D. Kan. 1971).

57. *Stricklin* v. *Regents of University of Wisconsin*, 297 F.Supp. 416 (W.D. Wis. 1969).

58. 283 F.Supp. 228 (S.D. W.Va. 1968).

59. 382 F.2d 807 (2d Cir. 1967).

60. *Id.* at 812-13.

61. 303 F.Supp. 1333.

62. Wright, *supra* note 13.

63. 382 F.2d 807.

64. Wright, *supra* note 13, at 1075-76, quoting 382 F.2d at 812.

65. Wright, *supra* note 13, at 1076 (emphasis added).

66. AMERICAN CIVIL LIBERTIES UNION, ACADEMIC FREEDOM AND CIVIL LIBERTIES OF STUDENTS IN COLLEGES AND UNIVERSITIES 27-8 (1970).

67. 303 F.Supp. at 1338 (emphasis added).

68. 290 F.Supp. 622.

69. 318 F.Supp. 608

70 *Id.* at 621, quoting *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 477 (1951).

71. 441 F.2d 299 (5th Cir. 1971).

72. *Id.* at 300, quoting 294 F.2d at 159.

A SENSE OF JUSTICE ON CAMPUS AND IN SOCIETY

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It's a weird experience to be sitting here in this enormous dining room, periodically hearing someone come to the microphone to say that Ed Schwartz will be speaking to you shortly. I thought that maybe we would do it like "To Tell the Truth." Someone would say, "All right, will the real Ed Schwartz stand up?" Then I would stand up.

The other unusual part of all of this for me is that I do not speak that much on campuses anymore. Four or five years ago, I made a decision to work in the community outside of the university so that the effect of having organized a student movement for ten years would not be hopelessly lost on the general population. Anyone who is concerned about the results of the recent election knows how important this kind of work is. So I am out in Philadelphia, working with the people who elected Frank Rizzo mayor, to translate some of the concerns of the past decade into language that ordinary citizens can understand. Maybe we'll be able to build a people's movement over the next few years. At least that is what we're trying to do.

As I say, though, when you do this kind of work, you do not get invited to the campus as much. Not that I don't enjoy getting invited to campuses. I love it. It is a way of getting back to happier days, and occasionally I run into someone who has read something I've written. That's really exciting. Tonight, for example, somebody told me that he had read me in school. In *school?* How's that for co-optation? I used to say when I was in NSA that my goal in life was to be the person whom some professor 100 years from now would include on an exam just to make sure the students had read the material. Then the students would come out of the exam room asking one another, "Was Schwartz in the lectures or the reading?" It seems I don't have to wait, however. Somebody at Florida State is doing it already. In fact, most of my speaking engagements since NSA have been in the South, which I find quite unusual in the light of the number of southern political figures who make their living by attacking us Northerners. It shows that, whatever else is happening in the country, down here the underground is alive and well.

My trip down here was a rough flight, jockeying through winds

and rains all the way. It was also very crowded. I was sandwiched between two people who wanted to talk to someone. So they talked to me, sometimes simultaneously. The person sitting on my left was heading to San Antonio, where he was going to be in basic training in the Air Force Reserves. At one point in the conversation, he mentioned that he wanted to become a member of the state police. I never get into heated arguments on planes—I'm too nervous about survival up there to get into a political battle—so I said something like, "Oh, really, why?" He said there's a road in New Jersey that he likes very much, and he likes the idea of doing it in a police car. I wondered out loud how many other people joined the police force for similar reasons. Then he went on to say that he was very interested in driving and was upset that people would just cut you off in the middle of the road. "Somebody," he told me, "has to be around to tell those people not to do that."

Meanwhile, the fellow on my right was telling me that he studied at Villanova in Philadelphia but that he was travelling to Puerto Rico, where he owns two or three companies. When he graduates, he intends to go back to Mexico to make lots of money. In fact, he couldn't understand why some students in the United States major in liberal arts when business majors make so much more money. Later in the trip, he pointed to a story in the newspaper. It seems that two boys in New York, one ten and one fourteen, raped a woman and threw her out of the window of a tenement house. My Mexican colleague was very upset about it. "There's one major problem in America today," he insisted. "Somebody ought to do something about people who do things like that." He then delivered a brief lecture on the importance of capital punishment.

When I arrived at the airport, I had to wait for my ride, and I sat down next to a woman in the Eastern Airlines waiting room. She, too, looked very upset; and, sure enough, before long she was telling me her life story. It seems that because of some hideous personal experiences in Atlanta she had arrived at the airport crying. Somehow, however, Northwest Airlines concluded that she had been drinking and refused to let her on her flight. Now she was waiting for a later flight on Eastern. We passed the time talking about companies that kicked people around in violation of the law, until, eventually, her Eastern flight had to leave.

Three conversations, with very different people, yet a common thread ran through them—the battle of ordinary citizens to uphold standards of law and justice in a society that seems to be falling apart. You can hardly sit down in an airport for more than ten minutes without someone's sounding off about lawlessness, disorder, or institutional breakdown in general. Sometimes they focus on overt signs of decay—crime in the streets and the like. Sometimes they

take aim at bureaucrats who kick people around for the slightest offense or no offense at all while serious crime goes unpunished. In every case, however, the conclusion is the same: The institutions aren't functioning. People do not trust one another anymore; people do not care about one another anymore; and nobody knows why.

Perhaps it is the inability of ordinary citizens to grasp what is really wrong that accounts for their uneasiness about the state of the country. We talk about a Nixon landslide, but I think the more revealing statistic about the election is how many people did not bother to vote at all. The percentage was the lowest since 1948 (33% of the eligible voters voted for Richard Nixon, 22% for George McGovern, and 45% decided that the politicians and the government made so little difference to them that they weren't going to vote at all). They did, indeed, "send them a message," and the message was that the institutions are not responding.

You are here to talk about these issues as they affect higher education—questions of law and justice, that is. Moreover, I suspect that to many of you, like my friends in the airplane, the word "justice" brings to mind some sort of procedure, a court that enforces laws with relative degrees of fairness. After all, the conference is being sponsored by a student judicial department.

I would suggest, however, that there are really two distinct traditions of justice that are often at war with one another. One does have to do with procedures and does account for most contemporary definitions of the word "justice." The other, however, is much broader and may account for our instinctive *attitudes* about the word "justice"—our *sense* of justice, if you will. If I have agreed to address the topic of substantial justice on the campus, I suppose that my main concern is this broader tradition, for I believe that it encompasses the other one. To get at the distinctions, I want to discuss the two traditions themselves for awhile, then relate them to certain contemporary debates. From there, I can deal with the issue of justice on the campus in greater detail.

The first tradition I call the idealistic tradition of justice. It is the notion of justice that one finds in the Old and New Testaments, where God demands certain standards of human beings in order to fulfill His commandments. These standards go beyond the day-by-day behavior of individuals in relating to one another. They apply to whole classes, to entire countries. In fact, nations which refuse to adhere to them—which worship false gods or oppress the poor or seek power as an end in itself—are threatened with destruction. Human beings have a responsibility to one another, the Bible says again and again, which should transcend the quest for money, power, and profit. Woe to those who fail to take it seriously.

There is also a philosophical version of this tradition, the Platonic

one. It views the world as seeking to imitate divine forms of truth and beauty. Justice becomes the balance between the forms and enables every citizen to determine the role he is best suited to play. The concept revolves around questions of worth. Does a society encourage a citizen to make his best possible contribution to the good of the whole? This issue is central to both the *Republic* and the *Laws*, where Plato wrestles with the kind of *polis* that would be worthy of a decent citizen. Yet like the Old and New Testaments, Plato conceives of justice not as a set of rules and procedures but as a goal, an image, an ideal that sets the standard for everyone to achieve.

The contrasting tradition—which begins with Aristotle and evolves through European and American liberalism to the positivists of today—is one which debunks the whole notion that there are ideals to which we should address ourselves, that there are transcendent goals which we should take seriously. In the 17th and 18th centuries, this was a predominant ethic. The worship of gods, the worship of ideals, the worship of mystical illusions came to seem a lot of nonsense. The world opened up the possibility of enormous productive expansion. If human beings would devote themselves to acquiring knowledge, to finding ways of using knowledge for human betterment (ill-defined), then the pursuit of ideals would be irrelevant. In fact, it would even be destructive, encouraging people to fight one another over points that they could not possibly prove one way or the other. It would be better to let such matters alone, in deference to more productive tasks. An invisible hand, in Adam Smith's terms, would somehow balance it all correctly, and this would guarantee justice enough for everyone.

From this perspective, I would suggest that the conflict we experience today is between movements of poor people and the young that operate out of the idealistic tradition of justice against a range of institutions that have long since ceased to take it seriously. America itself, going back to the first founding, the Puritan founding, began in the most idealistic and religious terms imaginable. Those of you who have read the *Modell of Christian Charity* which John Winthrop signed on the Arabella on the way to Massachusetts Bay know that the Protestant Ethic had very little to do with simply working and competing with one another for a piece of the pie. It had everything to do with fashioning a City on a Hill, a Utopian community in which people walk justly and live up to the standards of God. The Puritans of the early seventeeenth century saw themselves in much the same way that Jesus Freaks or Utopians who form agrarian communes see themselves today—as models for the world, as a new Israel, a new Jerusalem to which the rest of humankind would look for moral and spiritual example.

The tradition of America since the turn of this century has been quite different. It is the tradition which evolved from the conquest of poor people and farmers and working people by large corporations and the rich. It is the tradition which takes its cue from the belief that all we have to do is expand our abilities to produce, and our problems will be solved. It is the tradition which says that if our gross national product is one trillion dollars a year there will be so much wealth to go around that people will not have to fight one another for it. This tradition is the one which relies heavily on the development of procedures to keep us apart from one another—procedures which guaranteee a stability which makes production possible. Unless people remain silent about their larger claims on the community, the community cannot produce cheaply and efficiently. It cannot produce television sets and cars and motor boats which allow us to escape one another, and it cannot produce students who will be willing to accept institutions that make cars, television sets, and motor boats so that we might escape one another. This is the tradition which we confront, a tradition which lends itself to the challenges which it has faced through much of our lifetime.

What are these challenges? Now that I have defined these traditions, how can we relate them to the problems we face? Why, for example, is the view that production can solve all problems—the "trickle down" theory, in Kenneth Boulding's formulation—under such attack? Well, for one thing, it hasn't worked on its own terms; it hasn't trickled. We know that millions of people in this country (the figure is now, I think, 13.5 percent, maybe higher) still live at the poverty level. It does no good, moreover, to say that poverty here is more affluent than Indian poverty or African poverty. If you are living in hunger, if there are rats in your home, if you do not have heat in the winter, if you can not get anywhere in the city without being afraid for your life, what difference does it make to you that somebody might be living in even more squalor? Besides, some areas of our rural South and West and even rural Pennsylvania experience poverty as wretched as any in the world. So we have come to understand that wealth has not "trickled down" from the rich to the poor; the gap between them has never been wider. No wonder, then, that black people in the early '60s began to demand a higher standard for production than production itself—a standard of religious and civic justice that would *demand* the rich share with the poor as a matter of moral principle. After all, what had "trickling down" done for them?

The second assault upon the trickle-down theory came from ecologists. Gradually, they came to understand the physical effects of spiralling production upon the environment—that the world's natural resources and atmospheric conditions cannot continue to sup-

port it. Unless we learn to use our resources carefully, they said, the world will not survive. And the word "carefully" presumed a standard that the poor people of the world had been demanding all along—a standard of production that went beyond production itself.

Yet perhaps the greatest disillusionment with the trickle-down theory has been experienced by the children of affluence—by the sons and daughters of people who made it only to tell their children to take advantage of opportunities that they never had. To these young people, production has reached a law of diminishing returns all by itself. To pursue wealth for its own sake, they say, is meaningless. There have to be higher goals, like the ones which we learn in first and second grade when the Declaration of Independence and the Kingdom of God are taken seriously. Somehow, these young people say, there must be ways to pursue these ideals throughout life, if we hope to preserve any beauty in life at all. Needless to say, these are the young people who responded first to demands from poor people to fight for economic and social justice and to the appeals of ecologists for environmental sense. Both fit into their sense of the basic problem affecting their own lives—namely, how to fight for visions in a world without them.

So for a variety of reasons, poor people, ecologists, and the young have begun to question the very basis upon which our society has operated for the last thirty years, the predominant ethic that all we have to do is get into a system that produces and production will take care of itself. For the universities, this crisis has been acute. After all, what is the modern university designed to do? As Sheldon Wolin and John Schaar tell us in their useful little book, *The Berkeley Rebellion and Beyond*, the university has become the church of technological society. If a religious society fosters churches which teach the rituals that fulfill God's commandments, in a society that worships technology, progress, and production, the university becomes the vehicle where students can learn how to exploit the material resources for their own private enjoyment. Every one of you, I am sure, has debated with a professor as to whether you should explore values on a paper or merely present the so-called "facts." Some of you have demanded political science courses which discuss how people ought to vote as well as how they do. Others have demanded sociology classes which examine how a society might function, as well as how it does. Still others have searched for a philosophy class that considers the traditional notions of justice, beauty, and truth as well as the problems of linguistics and analytical positivism that philosophy classes do consider today. All of these are normal demands in an institution geared to production at a time when its constituents are seeking something more.

Indeed, even in the so-called "extracurricular" sphere of higher

education, the conflict arises. In a traditional university, the university of the Puritans which trained students to be ministers in the City on a Hill, the entire activity of the campus revolved around basic theological pursuits. In today's university, extracurricular activities are at best ignored, at worst underfinanced or prevented directly. There is no effort at all to create common programs, to foster common goals and demands, to stimulate common challenges in action and thought. Of course, if social movements—a civil rights movement, an anti-war movement, an environmental protection movement—pressure the institution from the outside then the students do pick up the ball. Once these pressures end, however, the university's so-called "forefront" role ends, and others must pick up the pieces. As in the classroom, the institution cannot take seriously things as they might be, only the tawdry world of things as they are.

And so it is—to bring the point home—when university people get together to talk about justice on the campus. For most of you, the issue is whether your judiciary is going to protect the private rights of students against the institutions which you attend. At least that is the crux of most of the articles in your working papers. What does the law stipulate? What is the Joint Statement on Rights and Freedoms of Students and what does it guarantee? Yet these papers avoid the deeper question of justice in the idealistic tradition—the question of whether the university is helping you learn how to fight for justice in a society that long ago ceased to take it seriously. You do not even ask in these papers whether the university is, in fact, teaching you how to adjust to this society, despite its injustices—to become passive victims of all the worst abuses that society can perpetrate against your own best instincts and ideals. Martin Luther King used to talk about creating maladjusted people. He did not mean unhappy, despairing, and despondent people—people who would leave the struggles for change to smoke dope and drink Coke and say that nothing is possible. He was talking about creating people who were maladjusted with things as they are because of their commitment to principles which long ago described what they might be. That is the spirit which, I suspect, many of you are afraid to recapture, because it might demand more than you are prepared to give. Yet that is what justice—ideal justice—requires.

Of course, this is not the first university conference to suffer from this limitation in its conception. I am here, in fact, because five years ago, shortly before the end of my term of office at NSA, I addressed a conference in Denver of academic moguls representing all areas of university life. The topic was "students and the law." It was to be my last conference as "President of all the Students," as we referred to it in NSA. For that reason, instead of addressing myself to the topic, I raised the issue that I raise with you tonight—

was the law of the university, in fact, just? I attacked "procedural liberalism," the liberalism that tried to distill the basic issues that young people were raising into their mildest possible form. I tried to demolish the way these presidents and deans were dealing with the protests that were exploding around them.

Do you recall this scenario? A group of students deeply concerned about the war in Vietnam or economic injustice or U.S. foreign policy would challenge the university's complicity with the government. When they would try to bring their proposals through the channels, they would be ignored. At some point, they would sit in at the president's office. Then the campus would debate the appropriateness of the sit-in and wonder out loud whether the administration was going to call the police. At some point, the administration *would* call the police. Then the campus would debate whether administration should have called the police. At some point, a student-faculty-administration committee would be created to deal with the questions of police, courts, protests, sit-ins, rules—everything but the issues which prompted the protests in the first place. Then things would go back to normal.

If you do remember this scenario, you can imagine how hard these presidents were trying not to come to grips with it. "How long can you deceive yourselves like this?" I asked them.

> Your response merely imitates the conditions which students protest, merely proves the point of their protest—that you are more interested in the protection of yourselves, the efficient functioning of your campuses, and your power to govern them than you are in creating healthier ties between the people of the campus, between yourselves and the students. You laughed when Mario Savio said, 'Never trust anyone over thirty.' Yet his comment stemmed from the premises upon which procedural liberalism operates—that people cannot afford to trust one another, that they can only afford to shield themselves and keep their distance. The questions which we are raising are too serious to be obscured in this manner, however.[1]

Despite my appeal, however, the conference rolled right along as planned, as if I had said nothing at all. So now I must throw the same challenge back at you. Will you merely consider procedures at *this* conference, or will you consider the issues that give rise to them as well? I will not accept the answer that we used to get in the '60s—that the one must be considered separately from the other, that the process can be divorced from the goals. The two are integrally related. In fact, let me conclude my remarks on this theme—on the relationship between these two kinds of justice, idealistic and procedural, that thus far I have posed as alternatives.

As I said before, justice—ideal justice at least—revolves around the issue of worth—what I am worth to my society and to my fellow human beings. Of course, some say that only material goals constitute the self-interest to which people will respond, but these critics have a lot of explaining to do. Why do some voters clearly vote against their economic interests in elections? Why, to raise the question that bothered my friend on the plane, do students reject affluence once they achieve a modicum of economic security? To these queries, apostles of materialism can make no intelligible response.

I would suggest, however, that the deeper self-interest to which all human beings respond is the one which relates to the vision of justice as well. It is dignity—a person's sense of worth in the overall scheme of things. All life is a quest for dignity, whether it is the dignity of a Spiro Agnew, who tries to make some people feel superior to others by arousing their prejudices and fears, or the dignity of a Martin Luther King, who challenged all people to live up to the highest goals which they could imagine. Of course, sometimes dignity is a question of money, particularly to those who have none. Dignity is *always* a question of "counting," however—of feeling important to the things that are important to you. It is for this reason that a just society is critical to the ultimate quest for human happiness, for only in a just society do all citizens feel that they are worth something to one another.

It is from the perspective of human dignity, moreover, that we can see that a demand for procedural justice is really a disguised demand for ideal justice as well. When a student seeks protection from arbitrary rules and decisions, he or she is asking to be considered as a human being who *deserves* protection from arbitrary rules. The student is saying, "Don't treat me as if I can't run my own life. Take me seriously for what I can do." If students are to be taken seriously enough to be protected from arbitrary rules, moreover, they should be taken seriously enough to make certain rules themselves. That was the essence of the student power philosophy we developed in NSA. "He who must obey a rule should make it," we said. Only then would a university be living up to its claim of treating students with genuine respect. Only then would the standard of dignity prevail.

The broadest lesson, however, is one which I have come to take most seriously since leaving the university, although I took it seriously then, too. It is the moral lesson which you, as students, ought to learn in fighting for change on the campus. Simply put, it is: to what extent is the battle for your own dignity leading you to a generalized understanding of the need of *all* people for a sense of dignity as well? Are you fighting only for new positions of power and authority for yourselves, so that you can make the same mistakes that your parents

have made? Or are you really working to change this system, not only for your own benefit but also for the good of all people who have been battered and beaten by it, at home and overseas?

I have almost lived to regret that I ever fought for student power, when I see what students have done with it. On campus, they become miniature deans and trustees, no different from the ones they replace. Worse, when they leave campus, these students become upper-level bureaucrats in the welfare department, bureaucrats who can't understand why poor people come to their offices demanding an adequate income for themselves and their families. Or they become teachers who join unions and concern themselves solely with the level of their salaries, without ever trying to improve the quality of their teaching. Or they become doctors and nurses who turn their backs on the struggle for quality health care in this county, arguing that they have neither the time nor the energy to bother with it.

So I must ask again, are the student power battles which you fight teaching you the principle of justice for all people or only for yourselves? It is that question, I submit, which divides those who fight for procedural justice from those who see justice as an ideal. Proceduralists fight for justice for themselves. Idealists fight for justice for everyone.

Take the Youth Political Caucus as an example. I attended a few of its meetings last year as an interested observer. I was shocked. Instead of young people welcoming an opportunity to reach out to others in the community, conveying to them a sense of their stake in a humane America, I heard students saying, "We have the eighteen-year-old vote, and there are six million of us; if we all voted the same way we would be able to run the country." What kind of message was that for America? What kind of message was that for a movement which talked about "turning the system around" and "reversing priorities"? Is it any wonder that ordinary citizens with many legitimate concerns of their own were a little frightened at language like that? Yet let me tell you, those students knew more about Robert's Rules of Order than any group of people alive. And, needless to say, they used them against one another with a vengeance.

Student power does impose responsibilities—not the kind of responsibilities that are usually described in the rule books. I am not talking about being deferential to all things, no matter what they are. I *am* talking about your responsibility to fight, again, for dignity. I am asking you to join some of us in the long-range effort to transform this system, which allows some people to make enormous amounts of money while others starve, which lets corporations expand their power while communities scramble for funds, which prevents working people by the millions from making the contribution to this society which they desperately deserve to make. That is what I am asking you to do.

If you do make this commitment now, you will have lots of company later on. We used to have a sign on the door of our house in Cambridge, Massachusetts, called the Alliance for Radical Change, the name of an organization we were trying to build. One day the postman asked us, "When are you going to blow up the post-office?" We had a long discussion about the postal service, about how it had been taken over by private industry, which was running it like a business. As a postman, he was fed up with not being able to deliver quality service to his fellow citizens. That was what *his* dignity required.

Since then, I have talked to employees of clothing manufacturers who resent the fact that they can not make clothes that are worth buying, to people employed by car companies who resent the fact that they are forced to make cars when the country needs public transportation, and to any number of veterans who bitterly resent the fact that they had to kill innocent women and children for a dictatorial government in South Vietnam that they despised. As I say, you will have lots of company.

Do not assume that this work in which we engage is easy, however. To win the second and third and fourth phases of the battle for justice and dignity, in order to raise new demands that all people can take seriously, a lot more work and energy and discipline will be involved; a lot more struggle and a lot more humility will be involved; a lot more reading about what people in the past have demanded, a lot more going out into neighborhoods and knocking on doors and sitting in bars and talking to people in lobbies and airplanes to understand exactly why they feel the way they do is involved. This is the kind of life you should be preparing to lead in 1972, the year when 33 percent of the country voted for order at any price and 45 percent of the country voted not at all. It is critical that you gird yourselves in this way. We face difficult days. Yet we need people who are willing to keep up the fight, who will not drop out to smoke dope and drink Coke and say that nothing can be done.

I would love it if more students were working with us in Philadelphia. They could expand upon the research we have begun into the economic institutions of the city. Then community groups who do not have time to do this sort of research might be able to discover where they have a chance to make real gains in their position.

Here in the South, you face a number of comparable issues. In many ways, you are just now coming to grips with an underlying issue of the Civil War. I am not now talking about equality for black people. We all know about that. I am talking about the other issue—namely, who should run Southern society, the people or the corporations? That's what the Populist Movement, which brought blacks and whites together, was all about. It was a battle to preserve the

fraternal, agrarian atmosphere of the South against fat cat millionaires, railroads, and bankers trying to destroy it. And the issue continues to this day. Who will control economic development in Atlanta? Elected officials representing ordinary citizens or political hacks representing the Chamber of Commerce? Who will control the rural areas of the South, the town meetings of places like Athens or the board meetings of companies like Lockheed? You are the ones, it seems to me, who are in the best position to determine the answers to these questions. You are the ones who can research these corporations, expose these corporations, fight these corporations, bring these corporations under control, wherever they operate to undermine the best quality of life in this region.

I end on this note: at any conference on justice and the campus, we must explore how the justice or injustice of the campus relates the traditions of justice as we have known them. We must talk about justice for everyone, not just justice for ourselves. We must talk about building a new kind of community, not simply about developing new sets of procedures. Since a community presumes common ends, we must discuss what the common ends will be. There are communities of prejudice, of hate, even of war, after all. We must rebuild the community of justice—in the way we discipline and run our lives, in the qualities that we expect from ourselves and others, in society as a whole. This must be our ultimate agenda—this, and no other. If we fail, survival itself may hang in the balance. If we succeed, however, the justice that we create will be a substantial justice, indeed.

FOOTNOTE

1. Edward Schwartz, "Comment," *Denver Law Journal*, Volume 45, 1968, p. 531.

INSTITUTIONAL JUSTIFICATION FOR THE EXISTENCE OF A CAMPUS JUDICIAL SYSTEM

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The basic institutional needs for a campus judicial system evolve from the institution's legal responsibility to complete its stated mission, maintain and protect the physical plant, and assure the rights of its community's members. If an institution of higher education in the 1970s fails in its tri-polar responsibilities, the court, which historically has tried to stay out of issues involving colleges and universities, will be forced to assume these three responsibilities. This fact was articulated in the decision issued in *Zanders* v. *Louisiana State Board of Education*,[1] where the court said: "If the minimum standards of fairness, having been repeatedly articulated for over 50 years, are not afforded to students in disciplinary cases, then it has become the rule rather than the exception, courts, state and federal, will draft rules on an ad hoc case by case basis to insure that rights of students are adequately protected."

An institution of higher education has two legal bases for exercising disciplinary power, one in connection with safeguarding the university's ideals of scholarship, and the second in connection with safeguarding the university's educational environment. Educational institutions enjoy a wide range of discretion in maintaining their academic standards. Ever since *Woods* v. *Simpson*,[2] the court has held that educational institutions themselves are best qualified to determine whether a student has maintained the school's minimum academic standards. In fact, in *Connelly* v. *The University of Vermont and State Agricultural College*,[3] the court followed this line of reasoning and voiced its reluctance to review academic suspensions or expulsions unless institutional officials acted "arbitrarily or capriciously."

In contrast to the well-established wide range of authority that exists for disciplining students on academic grounds, the institution's power to control a student's conduct or behavior within its educational environment is significantly more limited. Until the '60s the judiciary had been extremely reluctant to review higher educational disciplinary proceedings. This judicial fear was based on and still is based on the belief that an institution of higher education must maintain a special kind of environment with a certain posture and atmosphere if it is going to fulfill its educational goals. The court feared that its involvement may disrupt this necessary posture and atmosphere.

A second and more related source of judicial fear is that decisions in this area may lead the courts into a dismal swamp where judicial logic will be applied to institutional internal conflicts.

Putting these kinds of judicial concerns aside, I would like to analyze the institutional justification for the existence of a campus judicial system by discussing what I call the "Behavioral Six-Pack." Let us analyze these cans one by one and attempt to ascertain what effect they will have on our responsibilities and interests.

The first can contains the matter of "jurisdiction." The jurisdiction of the courts and the applicability of the federal constitution are quite clear in the area of tax-supported colleges or universities. Private educational facilities, on the other hand, have not been required to meet the same constitutional standards as the public institutions; but recent trends do indicate that the due process clause of the Fourteenth Amendment will be judged applicable to private institutions. For example, in *Sturm* v. *Trustees of Boston University*,[4] a student was charged with academic dishonesty and claimed that his procedural due process had been violated. The court in reviewing this case indicated that there had been no basic fairness in the proceedings because the student was denied the opportunity to examine the witnesses against him. Second, the court indicated that there was an implied contract between Sturm and the University in which the student agreed to pay tuition and other charges and to obey reasonable rules and regulations. In return, the University agreed that it would make available an educational process which would not be arbitrarily denied. In concluding this case the court said:

> The continued non-applicability of the principles of due process in private schools has no validity. Expulsion not only affects the student scholastically but can affect him personally and economically in his future life. When the principles of basic fairness and justice are not applied, the expulsion has been arbitrary. The court finds this to be a fact in this case, and for that reason the action of Boston University cannot stand.

The historical reluctance of the court to grant state action in such cases as *Green* v. *Howard University*[5] and *Grossner* v. *Trustees of Columbia University*[6] is a further evidence of the already discussed general reluctance of the courts to become involved in internal matters of institutions of higher education, for there probably is no better example of state action than that of Howard University. Howard University is a legislatively created creature of the federal government and not only applies for its federal appropriation from Congress but also, in the year of this court action, received over $13 million and was listed as a governmental agency in the official government telephone directory.

So we find one considering the question of jurisdiction that case law and recent trends indicate. But all institutions of higher education are or soon will be subject to the United States Constitution in the implementation of their campus judicial systems. The importance of this first can will become more obvious as we discuss the rest of the six-pack.

The second can of the "Behavioral Six-Pack" contains a question pertaining to the lawful mission of an institution. The mission that a college is legally authorized to perform is granted by its charter, state constitution, or state statute and is generally educational in nature; consequently, whatever controlling regulations and procedures a college wishes to establish must be justifiable as reasonable and desirable within the parameters of its definition of education and must not violate the constitutionally protected rights of its community members. The criterion is the college's educational goal; and any relationship that its regulations and procedures may have to the nature and functions of a political democracy, courts of law, or social institutions must be considered as purely correlational and not causal. Thus, if a given regulation or practice cannot be justified as contributing to the education of students as defined by the institution or if it violates the constitutionally protected rights of students, the college or university will be forced to abandon such regulation or practice.

The primary order of business for each institution, then, is to determine what it means by "education." Several courts have been helpful in this respect by specifying what the lawful mission of a college may be. The General Order on Judicial Standards of Procedure[7] delineated sixteen lawful missions of education, ranging from transferring the wealth and knowledge from one generation to another to developing, refining, and teaching ethical and cultural values. Within these broad legal limits the institution should define the education that it intends to offer its students, set the standards therefore, and issue degrees and certificates to indicate that a student has achieved these educational standards. The legal entity of an institution of higher education is its governing board. The original authority delegated either by the state or some other source is usually vested in the board. Traditionally this body has adopted the broad definitions of education and has delegated to college officers, faculties, and committees the task of further defining the institution's definition of education. Furthermore, the courts have held that an institution could define education differently from degree to degree, from division to division within the institution, and if necessary even from student to student.

The third can contains the rationale for the student-institutional relationship. During recent years there has been a vast reappraisal by the court of the importance of higher education. The question of

whether or not higher education is a right or privilege is the foundation to the relationship. The court observed in *Brown* v. *Board of Education*[8] that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied opportunities of an education." In 1961 *Dixon* v. *Alabama State Board of Education*[9] considered the nature of the interests involved and stated that "the precise nature of the private interests involved in this case is the right to *remain* at a public institution of higher education." Later in that same year the court went on to say, in *Knight* v. *State Board of Education*,[10] "Whether the interests involved be described as a right or a privilege, the fact remains that it is an interest of almost incalculable value . . . private interests are to be evaluated under the due process clause of the Fourteenth Amendment, not in terms of labels or fictions, but in terms of their true significance and worth." The court in *Crane* v. *Crane*[11] concluded in 1964 that "it is a truism that in this country the luxuries of yesterday are the necessities of today, and it would seem that the matter of higher education, more than almost any other subject, equates itself completely and appropriately with Justice Holmes' *felt necessities of the time*."

This delineation sets the stage for the two legal bases for exercising disciplinary power: maintaining the educational environment and the institution's stated ideals of scholarship. The General Order summarized this issue as follows:

> Attendance at a tax supported educational institution of higher learning is not compulsory. The federal constitution protects the equality of the opportunity of all qualified persons to attend. Whether this protected opportunity be called a right or a privilege is unimportant. The student voluntarily assumes obligations of performance and behavior reasonably imposed by the institution of choice relevant to its lawful mission, processes and functions. These obligations are generally much higher than those imposed on all citizens by the civil and criminal law. So long as there is no individual discrimination, no deprival of due process, no abridgement of a right protected in the circumstances, no capricious, clearly unreasonable or unlawful action employed, the institution may discipline its community members to secure compliance with these higher obligations as a teaching method or to sever the student from the academic community. No student may, without liability to lawful discipline, intentionally act to impair or prevent the accomplishment of any lawful mission, process or function of an educational institution. The discipline of students in the educational community is a part of the teaching process; the discipline process is not equivalent to the criminal law process of federal and state law. The analogy of student discipline to criminal

proceedings is not sound. The lawful aim of discipline may be teaching and performance of a lawful mission of the institution. The nature and procedures of the disciplinary process in such cases should not be required to conform to processes of criminal law, which are far from perfect, and designed for circumstances unrelated to the academic community. But judicial mandate to impose upon the academic community in student discipline the intricate, time-consuming, sophisticated procedures, ruled safeguards of criminal law would frustrate the teaching process and render the institutional control impotent.

The courts have clearly recognized the first basis for disciplinary power, the maintenance of the educational environment. In *Jones* v. *Tennessee State Board of Education*[12] and *Goldberg* v. *Regents of the University of California*[13] the courts said that universities have the inherent general power to maintain order and to formulate and enforce reasonable rules necessary to protect their educational environment and their efforts to meet their stated missions.

The second basis for disciplinary power is best articulated by Dr. Robert Callis in his 1968 article "The Colleges and the Courts."[14] Callis said the question is:

> . . . whether the conduct of a given student renders him unacceptable as a student, as a candidate for a degree or as a recipient of a degree. This becomes much clearer in our professional schools or programs where the continuance of a student in a professional curriculum and the awarding of a degree to a student from a professional curriculum in some way contributes to certifying such a student to professional practice on an unsuspecting public. What we are concerned with here are the judgments and ethical values which guide a student in the utilization of the knowledge and intellectual power which we have helped him to acquire. Do we beam with pride when one of our bright chemistry students devises an ingenious remote control device and blows up half of the stadium during the football game? When a business student employs esoteric accounting techniques to embezzle funds from his employer? Or when a journalism student slants his news stories in a character assassination short of liable in retaliation against a tax assessor? If we define education as no more than the acquisition of knowledge and the development of intellectual powers, then we take no cognizance of the above questions. However, if one takes cognizance of such incidences of student conduct, it is because such conduct is contradictory to our educational standards.

Each college must work out its own standards of conduct for students. But such standards must be a direct outgrowth of the institutional definition of education.

In carrying out functions related to student discipline many questions may be raised regarding the matter of what is commonly called "double jeopardy." There are a number of obvious areas that are exclusively the concern of the institution; likewise there are areas that are exclusively the concern of the civil authorities. Academic matters, such as cheating, plagiarism, et cetera should be dealt with by the university only. Criminal conduct should be left to the civil authorities. There are, however, areas of jurisdictional overlap in which academic sanctions of disciplinary warning, probation, suspension, or expulsion may properly be imposed by non-academic conduct which interferes with the educational endeavors of the institution.

It would be appropriate in these areas of concurrent and overlapping civil and institutional interests that the university allow civil prosecution and still take steps to protect its own personnel, functions, and facilities. The court in *Zanders* v. *Louisiana State Board of Education*[1] said, "The university's basic purpose is the transmission of knowledge and understanding in the development of the intellectual and rational capacity of students. The university should clearly distinguish disciplinary action to protect university functions from general law enforcement, and should treat students as being separately accountable to the two." In light of the above court action it is very clear that the university has the right and the responsibility to take disciplinary action concurrently with civil action in those instances where student behavior represents a threat to the purpose, function, and facilities of the institution.

The fourth can of the "Behavioral Six-Pack" contains the rights which members of the community have and which the institutions are obligated to protect. Now that the country has come to its senses and provided eighteen-year-olds with legal adult status, the reality of the educational situation becomes easier to perceive. The courts have time and time again indicated that an individual does not forfeit his constitutional guaranteed rights by becoming a student; nor does the status of a student give an individual any special rights or privileges. But these constitutional rights are not absolute and unlimited. The courts have attempted to delineate for us what limitations exist within the special kind of educational environment in which an institution of higher education must operate. For example, in *Stricklin* v. *Regents of the University of Wisconsin*,[15] Judge Doyle provided guidelines for the use of temporary suspension or expulsion. Even though these guidelines are more protective than the ones promulgated by the Western District Judges of Missouri in their decision in the second *Esteban*[16] case, both decisions clearly provide

the institution the authority to remove an individual from the educational community when the appropriate university authority has the reasonable cause to believe that danger will be present if the individual is permitted to remain pending a decision following a full hearing.

The *Buttny* v. *Smiley*[17] decision in 1968 provides a further example of how the courts have limited constitutional rights within the educational environment. Judge Arraj commented that "the First Amendment rights are incorporated into the Fourteenth Amendment; however, they are not a license to trample upon the rights of others. They must be exercised responsibly and without depriving others of their constitutional rights, the enjoyment of which is equally precious." A third and probably the most blatant example of the court's limiting the constitutional rights of students can be found in *Moore* v. *Troy State University*.[18] In his decision in this case Judge Johnson clearly gave institutions of higher education the authority to search and seize for disciplinary reasons without the benefit of a prior review based upon probable cause or a reasonable cause to believe that a university regulation had been broken. Even though Judge Johnson repeatedly articulated the fact that individuals do not lose constitutional rights by becoming students, he clearly placed students in the position of becoming third-class citizens. Another limitation that is equally difficult to understand when taken within the context of current case law is the case of *Barker* v. *Hardway*.[19] In this case the court denied the student's request for counsel on the grounds that a disciplinary expulsion hearing was not a criminal proceeding, thus rendering the Sixth Amendment inapplicable to such processes.

The fifth can of the "Behavioral Six-Pack" contains what might be called the Educational Community Concept. As has been seen, there are two bases for disciplinary action. One concerns the maintenance of order in the educational atmosphere of the campus, and the other concerns what many institutions refer to as "conduct unbecoming a student."

As was discussed earlier, each institution of higher education clearly has the inherent authority to maintain order and discipline within its environment, and this authority has no special reference to students alone. This delegation of authority applies to all individuals of the educational community whether they are faculty, staff, students, or visitors. It is because of this fact that I strongly recommend to institutions of higher education that they seriously reconsider their positions, which generate student conduct codes and faculty conduct codes, and develop a community conduct code approach to the maintenance of this order. For a long time now I have found a lack of rationale for delineating certain kinds of student behavior that is unacceptable but not including faculty, administrators, civil service

personnel, and visitors under the authority of the same code. The community concept is the most reasonable approach to dealing with this university need.

Considerations of conduct unbecoming a student or safeguarding the institution's ideals of scholarship may raise the question of whether the unbecoming conduct was engaged in in our community or outside it. An institution of higher education engages in a continual process of evaluation of a student to determine how well he meets the educational standards of the institution, starting from the time he applies for admission, and continuing up to and including determining whether he has met the standards for the degree that he is seeking. It should be the conduct of the student, as it may reflect on the kind of person he is, that we are concerned with in this instance, not *where* he engages in such conduct. Thus, the question of on-campus or off-campus behavior should be considered as irrelevant, and our focus should be on the evaluation of the student as to his acceptability as a student without any particular reference to where he engages in the unacceptable conduct.

These kinds of educational community standards and the attending rules and regulations should be set in writing and published for all students. U. S. District Court for the Western District of Missouri commented on this rationale for student discipline as follows:

> The discipline of students in the educational community is, in all but the case of expulsion, a part of the teaching process. In the case of expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community. Even then, the disciplinary process is not equivalent to the criminal law process of the federal and state statutes. For a while the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social, and economic future; he or she may or may not be imprisoned, fined, disenfranchised, or subjected to probationary supervision.

Therefore, it can be seen that the educational community concept not only contains the development and implementation of rules and regulations that maintain the educational environment for the community but also may include educational behavioral standards. Both of these sets of regulations must be adhered to if an individual is going to remain a member of the community. The educational standards may vary from degree program to degree program or from student to student. If an institutional mission is more than just a transference of knowledge from one generation to the other, it is that institution's responsibility to stimulate students and faculty

within the institution to implement the complete community concept. On the other hand, if our mission is only transferring the wealth and knowledge from one generation to another without the responsibility for developing, refining, and teaching corresponding ethical and cultural values, only half of the concept needs to be implemented.

The last can of the six-pack should be saved to open in the evening because it contains more than theoretical verbage of supercilious sophisticated legalise. It is hoped that the brief discussions of jurisdiction, institutional definitions of education, the student-institutional relationship, rights and limitations, and the educational community concept will be of some assistance.

FOOTNOTES

1. *Zanders* v. *Louisiana State Board of Education*, 281 F.Supp. 747 (1968).
2. *Woods* v. *Simpson*, 146 Md. 547, 126 A. 882 (1924).
3. *Connelly* v. *The University of Vermont and State Agricultural College*, 244 F.Supp. 156 (1965).
4. *Sturm* v. *the Trustees of Boston University*, Equity No. 89433 (Sup. Ct. Sufforlk County, April 18, 1969).
5. *Green* v. *Harvard University*, 271 F.Supp. 609 (1967).
6. *Grossner* v. *the Trustees of Columbia University*, 287 F.Supp. 535 (1968).
7. *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education.* 45 F.R.D. 133 (1968).
8. *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954).
9. *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (1961).
10. *Knight* v. *State Board of Education*, 200 F.Supp. 174 (1961).
11. *Crane* v. *Crane*, 45 Ill. App.2d 316, 196 N.E.2d 27 (1964).
12. *Jones* v. *Tennessee State Board of Education*, 279 F.Supp. 190 (1968).
13. *Goldberg* v. *Regents of the University of California*, 249 Cal.App.2d 867,57 Cal. Rptr. 463 (1967).
14. "The College and the Courts," *Journal of College Student Personnel*,[20] (1969), 75.
15. *Stricklin* v. *the Regents of the University of Wisconsin*, 297 F.Supp. 416 (1969).
16. *Esteban* v. *Central Missouri State College*, 290 F.Supp. 622 (1968).
17. *Buttny* v. *Smiley*, *281 F.Supp.* 280 (1968).
18. *Moore* v. *Student Affairs Committee of Troy State University*, 284 F.Supp. 725 (1968).
19. *Barker* v. *Hardway*, 283 F.Supp. 228 (1968).

EDITOR'S NOTE

Having considered the legal concepts that have been defined in the first four articles, the reader should now evaluate the following four judicial systems. In particular, note how each system guarantees the rights of students. Consider also how the system "fits in" to the general organization of the institution. Does the system serve the needs of the campus?

Each system is described by an individual intimately involved in the operation of the student-conduct program. The systems were selected for presentation on the basis of who—student, faculty, or administration—is involved. The Michigan State University system involves students, faculty, and administrators. An entirely administrative system is employed at the University of Wisconsin-Madison. Only students are involved in hearings at the University of Georgia, and students and faculty are jointly responsible for hearings at Louisiana State University at Baton Rouge.

MICHIGAN STATE UNIVERSITY JUDICIAL SYSTEM

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The judicial system for undergraduate students at Michigan State University was established with the adoption of the report on *Academic Freedom for Students at Michigan State University* (Academic Freedom Report) in 1967. This report was prepared by the Faculty Committee on Student Affairs after "an extensive and intensive study of the University's rules and structures relating to academic freedom for students. The report recommended guidelines which identify rights and duties of students in regard to conduct, academic pursuits, the keeping of records, and publications. It [proposed] structures and procedures for the formulation of regulations governing student conduct, for the interpretation and amendment of the guidelines, for the adjudication of student disciplinary cases, and for channeling to the faculty and administration student complaints and concerns in the academic area." (Preface to 1967 edition, *Academic Freedom for Students at Michigan State University*.)

The committee sought to formulate an operational definition of "academic freedom" and to provide for its concrete application to student life on the campus. As a result, the Academic Freedom Report identified rights and duties of students and provided for them the carefully prescribed means to substantive and procedural due process which constitutes the present judicial system.

The University's underlying philosophy on academic freedom as expressed in the Academic Freedom Report is reflected in the purpose, processes, and procedures of the judicial system. The central purpose of the system is to protect an environment for learning. Maximum freedom of expression and communication for an individual is deemed most essential in the learning process. If freedom of expression and communication is to be valued for all members of the University, individuals must assume responsibility to refrain from interfering with the rights of others. A conflict of rights is inevitable. The resolution of conflicts requires an understanding that rights and responsibilities are reciprocal and must be mutually respected. Only through the delicate balance of rights and responsibilities can the order of the University be maintained in such a way as to promote its purpose. The challenge to the judicial system, therefore, is to provide a decision-making and con-

flict resolution process which will insure maximum freedom and necessary order.

As a further protection of the learning environment, the judicial system is intended to increase the means of self-government by the institution, as well as to increase the means of self-discipline by individuals and groups within the University. It provides a way of resolving University problems internally where resolution is likely to be most effective.

Two separate processes are integral to the system. One process provides the means for assessing the norms of the University community through judicial review of regulations and administrative decisions. The other process insures fair play in judgments regarding individual and group behavior alleged to be outside the norms articulated in regulations and policies.

Procedures are carefully drawn for both processes. Reasoned discussion and debate are provided for in the review of regulations and administrative decisions. The essentials of procedural due process are guaranteed at all levels where judgments regarding individual or group behavior are made. At the same time, efforts are made to minimize the adversary nature of a disciplinary situation. Overall, the procedures of both processes reflect a reliance on guidance rather than retribution and on persuasion rather than power. The "good faith" of all members of the community is central to the successful operation of the judicial system.

Structure and Organization of the System

The structure and organization of the undergraduate judicial system at Michigan State University is outlined in the chart which follows. The chart indicates the composition, method of selecting members, jurisdiction, and decisions available at the different levels.

Also shown are routes of appeal and referral. The decision of a lower judiciary may be appealed to the next higher judiciary with final appeal being to the vice president for student affairs. Only those decisions by the Student-Faculty which are of a disciplinary nature, however, may be appealed to the vice president. Any judiciary may waive jurisdiction over a particular case and refer it to a higher or lower judiciary. In addition, a living unit may waive all judicial responsibility to its major governing group. (Most living units in the current system have done this, partially as a result of regulation changes within the jurisdiction of the living units.)

Relationship of the Judicial System to Campus Governance

Legislation and adjudication are two separate functions of campus goverance, although interdependent for their validity and effective-

ness. Each needs the other for support and criticism. The judicial system is structured on the principle that legislative authority requires judicial responsibility. Accordingly, there is provision for a judiciary body to parallel each legislative body, depending upon it for provision of members and having corresponding jurisdiction. All-student judiciaries are established in general through the Academic Freedom Report, but they are defined more specifically in the constitution of the student governing bodies whose jurisdiction they share. For example, the composition of the All-University Student Judiciary and the selection of its members are determined by the constitution of the Associated Students of Michigan State University. The Student-Faculty Judiciary, the highest judiciary established in the Academic Freedom Report, is also provided for in the bylaws of the Academic Council, which is the highest governing body of student and faculty membership.

Jurisdictions

Jurisdictions of the various judiciaries are determined on the basis of constituencies and categories of regulations. Undergraduate students are held accountable for behavioral expectations set forth in duly established regulations regarding individual and group conduct.

Faculty and administrators are held accountable in that their policies and decisions can be challenged by a student who believes a policy or decision to be inconsistent with the principles outlined within the guidelines of the Academic Freedom Report.

Each judiciary has jurisdiction over the constituency of the corresponding legislative body. For example, the Student-Faculty Judiciary is the only body within the structure which may hear challenges to the decisions of faculty or administrators, as well as alleged violations by students.

Categories of regulations. Michigan State University has no unified code of student conduct. Rather, regulations, policies and administrative rulings are combined to form the expectations for students. Jurisdiction over each rule is determined by who established it and to whom it applies. To illustrate, five categories of rules are listed and defined below.

A. General Student Regulations:
   1. Apply to the conduct of all registered students on the grounds governed by the Board of Trustees.
   2. Are established by students and faculty with the approval of the Board of Trustees.
   3. Are enforced by all students, faculty, and administrative personnel, with support of the Department of Public Safety.
   4. Are adjudicated through University judicial procedures.

(Alleged violations of regulations regarding scholarship and grades and records and identification are referred to the Student-Faculty Judiciary. Cases involving University facilities, materials, and services and the individual are usually referred to the All-University Student Judiciary.)

B. Student Group Regulations:
   1. Apply to these students specified in the regulation.
   2. Are established by respective student groups with the approval of the vice president for student affairs.
   3. Are enforced by students, faculty, and administrative personnel.
   4. Are adjudicated through University judicial procedures by living unit, major governing group judiciaries, or the All-University Student Judiciary.

C. Administrative Rulings:
   1. Apply to thosee specified in the ruling.
   2. Are established by various offices of the University for implementing delegated administrative responsibility, usually after consultation with student-faculty advisory committees.
   3. Are enforced by administrative personnel in the respective offices, supported by students and faculty.
   4. Are adjudicated through administrative action and/or judicial procedures.

D. All-University Policies:
   1. Apply to all students or, if specified, all members of the University.
   2. Are recommended by legislative or executive bodies within the University and approved by the Board of Trustees for carrying out major University responsibilities.
   3. Are enforced by students, faculty, and administrative personnel.
   4. Are adjudicated through University judicial procedures, which may include referral to one of the judiciaries described above or to a separate body.

E. University Ordinances:
   1. Appy to all individuals—students, employees, visitors—on the campus.
   2. Are established by the Board of Trustees.
   3. Are enforced by the Department of Public Safety with the support of students, faculty, and administrative personnel.
   4. Are adjudicated through criminal court proceedings as misdemeanors. Ordinances are duplicated in part by general student regulations. In some few cases, the county prosecu-

tor may decline to prosecute and may refer a matter to the Office of the Vice President for Student Affairs. If the matter falls under a regulation it is referred for judicial action and the Student-Faculty Judiciary determines whether a hearing should be conducted.

Processes and Procedures

Disciplinary Cases. The fundamental rules of due process are prescribed through the Academic Freedom Report and are required at all levels of the structure. Operational procedures vary somewhat among judiciaries. The essential steps of the disciplinary process are as follows:

A. Any member of the University community may initiate a complaint against an undergraduate student. Reports of alleged violations of living unit or major governing group regulations are made to the chief administrative officer of a living unit, in residence halls the head advisor. Reports of alleged violations of all-university regulations or policies are made to the area director, who acts as administrative officer on behalf of the Dean of Students Office for students living in his area. An area director is designated for off-campus students as well as those on-campus.

B. The student is notified by the appropriate administrative officer that he is accused of violating a regulation and is requested to meet with the administrative officer. In the subsequent conference, the student may: 1) admit to the allegation and request, in writing, that the administrative officer take action; 2) admit to the allegation and request a hearing by a judiciary; or 3) deny the allegation, in which case the student is automatically referred to an appropriate judiciary for a hearing. It should be noted that, as a matter of practice, if the student fails to meet with the administrative officer the case is also referred to the appropriate judiciary.

C. Upon the student's request, the administrative officer may take whatever action seems appropriate. Administrative actions are usually in keeping with the range of actions available to the judiciary at the same level but are not restricted to these. The student is informed in writing of the administrator's decision, and that the decision may be appealed to the Student-Faculty Judiciary.

D. If a judicial hearing is to be conducted, a student accused of a violation is entitled to:
   1. Written notice 72 hours prior to a hearing, stating:

a. Time and place of the hearing.
b. Charges, of sufficient particularity to enable the student to prepare his defense.
c. Names of witnesses.

2. Appear in person and present his defense.
   a. Call witnesses in his behalf.
   b. Be accompanied by counsel of his choice from among the student body, faculty, or staff of the University.
   c. Ask questions of the judicial body or witnesses.
   d. Refuse to answer questions.
3. Elect not to appear.
   a. Absence to be noted without prejudice.
   b. Hearing to be conducted in student's absence.
4. An expeditious hearing.
5. An explanation of reasons for any decision.
6. Notification of his right to appeal.

Substantive Cases. A different process is followed in hearing substantive cases in which a regulation or an administrative decision is alleged to be inconsistent with the guidelines established in the Academic Freedom Report. The general procedures employed are as follows:

A. Student submits a request for a hearing in which he must specifically cite those sections of the Academic Freedom Report he believes to have been violated and provide a brief statement of argument. A student need not be in violation of a regulation in order to challenge.

B. If the judiciary believes the appeal has merit (e.g., it falls within the judiciary's jurisdiction, it is not frivolous) a copy of the appeal is sent to the party responsible for the decision or regulation and a written response is requested.

C. After considering both the request for hearing and the response, the judiciary may do one of the following:
   a. Accept the request for a formal hearing.
   b. Reject the request.
   c. Invite the parties to discuss the matter informally with the judiciary.

D. Hearings are conducted as follows:
   1. Hearings are open.
   2. Both the appellant and respondent may be accompanied by counsel from the student body, faculty, or staff of the University.
   3. Each party is given thirty minutes to present his case.
   4. Each party is given ten minutes for rebuttal.

5. Parties direct all remarks and questions through the chairman.
6. Members of the judiciary may ask questions during the hearing.

E. The judiciary considers the matter in closed session and makes a ruling.

F. Parties to the case are notified of the judiciary's findings, and all opinions of the judiciary are made public in an appropriate manner. There is a community expectation that if a regulation or decision is found to be inconsistent with the Academic Freedom Report the changes necessary to bring about consistency will be made. Compliance is gained primarily on the basis of "good faith." A ruling of the judiciary that finds no inconsistency serves to reinforce the validity of the decision or regulation.

In addition to the regular procedures just described, a student may request expedited consideration of urgent cases in which it is alleged that a regulation or administrative decision threatens immediate and irreparable infringement on student rights as defined in the Academic Freedom Report. If in the opinion of the chairman a request has merit, a preliminary hearing will be called before a panel of the judiciary. The panel may decide to request the administrator or administrative office to postpone or withdraw action pending a full hearing on the case.

Other Judicial Bodies

Several judicial bodies within the University have special areas of jurisdiction and may or may not have a relationship to the main judicial structure described above.

A. *College and departmental hearing committees* have original jurisdiction over a student complaint that his academic rights have been violated by a faculty member. Composition and procedures of such committees vary. Decisions at the departmental level may be appealed to the college committee. College level decisions may be appealed to the Student-Faculty Judiciary, whose decision is final.

College and departmental committees may also hear student complaints concerning the quality of instruction. Decisions on complaints of this kind, however, may not be appealed beyond the college committee except to the dean of the college, who may ask that a given case be reconsidered.

B. *The Student Traffic Appeals Court* is an autonomous, all-

student body provided for under the ASMSU constitution. The court has appellate jurisdiction over summons issued by the Department of Public Safety for violation of Student Motor Vehicle Regulations. The first appeal is received in writing and considered by a panel of justices. A second may be made by appearing in person before the entire court. There is no further appeal. Student Motor Vehicle Regulations are recommended by an All-University Traffic Committee (student-faculty membership) and are approved by the Board of Trustees. A fine structure for violations is provided within the vehicle regulations.

C. *The Anti-Discrimination Judicial Board* is coordinated through the Office of Equal Opportunity Programs under the Vice President for University Relations. It is composed of three students, three faculty members, one representative each from the administrative-professional staff, the clerical-technical staff, and the labor employees, with an ex-officio secretary appointed by the president of the University. The board has jurisdiction over violations of the University policy against discrimination based on race, creed, ethnic origin, or sex. It may hear complaints filed by a student, faculty member, or employee. Parties involved in antidiscrimination proceedings have unrestricted choice of counsel. The board may specify the actions that must be taken by the charged individual or organization to remedy a violation. Intent is to remove the effects of discrimination rather than to punish violators.

Appeals may be made to the Anti-Discrimination Appeals Board which is composed of three members. Each of the parties involved designates one member from the University community. The third member, and chairman, is selected by the first two or, if they are unable to agree, is appointed by the American Arbitration Association.

D. *Graduate Student Judicial Structure.* A completely separate judicial structure is provided for adjudicating cases brought by and against graduate students in the areas of: 1) academic rights and responsibilities; 2) professional rights and duties of graduate assistants; 3) professional rights and duties of other graduate students; and 4) University regulations. Judiciaries are provided for at the departmental, college, and University levels. Each judiciary is composed of an equal number of faculty and student members with a faculty member serving as chairman. Decisions available include warning, a probation with specific stipulations, and dismissal from the student's academic program.

E. Other hearing or grievance procedures on the campus include those for the faculty, the administrative-professional personnel, the unionized hourly employees, and student employees.

Additional Thoughts

The discussion of a model, particularly an operational one, does not seem complete without some remarks regarding the model's strengths and weaknesses. Those who work with the system, as members of the Judicial Programs Office staff, have a commitment to facilitate that system. We also believe we have a responsibility to evaluate its operation and effectiveness and to recommend change where we believe it to be appropriate and necessary. Because of this we have proposed a revision which is currently under consideration.

The strength of the system, we feel, is essentially within the philosophical base as reflected in the statements on purpose and processes. Any revisions which might be recommended are intended to enhance, not diminish, the commitment to this philosophical position. Since emphasis has already been given to this area, attention here will be directed to limitations of the system as we perceive them. The limitations are summarized below.

1. The provisions for due process guaranteed by the system emphasize the rights of the accused individual and underemphasize the rights of the complaining or aggrieved party. Regardless of the nature of a hearing, the parties involved have rights corresponding with their respective interests in the case. If complaining or aggrieved parties to a case are to be encouraged to utilize and participate in the judicial process, then we feel their rights should be better defined and protected.
2. The system also underemphasizes the importance of all parties to a case being present at the hearing. The educational merit of any judicial proceeding is the opportunity members of a judiciary and the accused individual have for discussing the latter's behavior. The value of such discussion goes beyond its importance to the judiciary in determining an action to be taken. The current procedures do not clearly state an expectation that the accused individual will appear for a hearing.
3. Students have an option in disciplinary cases for being heard administratively rather than by a judiciary. The effect of the administrative hearing option is to restrict the opportunities individuals have at various levels of the Universitys' decision-making process for assuming responsibility corresponding with their authority. There are justifiable arguments supporting the administrative hearing option, but if one takes the position that

students and governing groups have a responsibility for enforcing policies and regulations that they themselves have developed and approved, the appropriateness of the administrative option may well be questioned.

4. Various administrative offices, divisions, departments, and colleges of the University have policies established by and for their respective units. The responsibility for enforcement of these policies, many of which directly affect students, rests with the chief administrators of those units. The system, however, does not clearly define and legitimize the kinds of decisions available to administrators for enforcing policies in these areas.
5. In addition to the undergraduate judicial system, graduate students and the faculty have established their own judicial systems for the purpose of dealing with questions of rights and responsibilities appropriate to their respective groups. The three systems are separate and distinct and fail to give adequate consideration to the interdependency of rights and responsibilities of all members of the University community. Thus, no single system is able to insure adequately the rights of its own constituents.

On balance we feel the strengths of the current system outweigh its weaknesses. To the extent that it encourages self-government and self-discipline and protects the learning environment, the weaknesses, which we see to be primarily procedural, are insignificant by comparison.

LOUISIANA STATE UNIVERSITY'S CODE OF STUDENT CONDUCT

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Introduction

The Louisiana State University System of higher education is made up of six separate and, to a degree, autonomous campuses. These six campuses have a combined enrollment of just over 40,000 students. The chief administrative officer of the LSU System is the President of the System. Louisiana State University (Baton Rouge), which was established in 1860 and which has an enrollment of slightly over 22,000 students, is the oldest and largest campus in the LSU System. The chief administrative officer of the Baton Rouge Campus is a Chancellor who is charged with the responsibility of administering the day-to-day operation of this campus of the LSU System. The Code of Student Conduct which will be described in this presentation is the code for Louisiana State University at Baton Rouge.

Philosophy of Judicial System

The basic purpose of LSU as stated in the Constitution of Louisiana is "to serve the needs of the people of the state." This is generally interpreted to mean through teaching, research, and extension activities. However, when the University's purposes are being discussed in terms of its disciplinary powers and judicial system, we must think primarily in terms of the teaching function. From this perspective we must say that the University was established for, and has as its goal, the providing of educational opportunities for all who choose to attend LSU as students. Students choose to come to LSU and take advantage of its educational opportunities of their own volition; thus, we consider the University to be a membership organization.

The University then has a responsibility to protect its educational purposes, and, as a corollary, to protect the University community from misconduct on the part of student members. It follows that the function of the University's disciplinary power and its judicial procedure is to protect its educational purposes and the health and safety of the University community, and the safety of property thereir through the regulation of the use of University facilities and throug

the setting of standards of scholarship and conduct for its students. The University's Code of Student Conduct is a codification of standards of behavior for its students, as well as an official statement of the due process procedure to be used when students are charged with misconduct and penalties provided for students found guilty of misconduct.

History

Louisiana State University has long had a tradition of procedural due process in its disciplinary procedure. In light of court interpretations relating to substantive due process, historically the system has not been as good, because in the 1940s and 1950s there were included in the regulations outlining misconduct such statements as "conduct unbecoming a student." Historically, the faculty and students have always played the major role in the judicial procedure.

For approximately twenty years prior to 1967, the University's judicial procedure was outlined in a document known as *Louisiana State University's Disciplinary Procedure*. In 1967 the administration of the Division of Student Affairs requested that the chancellor appoint a faculty-student committee to study legal changes in the student-institution relationship growing out of recent court decisions, and to submit suggestions for a new Code of Student Conduct that would be relevant to the 1970s. The principal goal in this effort was to develop a new Code of Student Conduct that would meet a court test of substantive and procedural due process.

This committee worked for over two years, and in the Fall of 1969 it submitted a proposed new Code of Student Conduct for consideration by the Office of the Chancellor. After review by the Faculty Council and administration in the Division of Student Affairs, this document was approved by the Chancellor and issued as an official document in November 1969.

In the period from November 1969 to November 1971, suggestions for modification, changes, and clarifications in the code were made by a number of individuals. These individuals included members of the faculty charging students under the code, students charged under the code, members of the Committee on Student Conduct, members of hearing panels, representatives from the Student Government Association, and others. A file of these suggested changes was maintained, and in December 1971 a special review committee was appointed to re-work the code. Using the approach outlined in the code for modification, the committee reviewed all of the suggested changes and attempted to give due consideration to including all in a revised code. In the late summer of 1972, the Chancellor issued the revised Code of Student Conduct as an official document of the University.

Structure of Judicial System

As a written document the Code of Student Conduct can be divided into five major segments as follows: statement of policy; procedural principles; disciplinary sanctions; misconduct; and administrative procedures. A brief discussion of each of these sections should paint a fairly clear picture of the operation of the judicial system at Louisiana State University (Baton Rouge).

Statement of Policy

This section of the Code of Student Conduct deals with the legal power and authority of the University through its faculty and administration to establish rules and regulations for the government and discipline of students. This statement also distinguishes between the disciplinary power of the University and the legal power of civil authorities to deal with violations of civil laws. The University does not consider its disciplinary hearings to be a trial; thus, University authorities do not consider that a student is placed in double jeopardy if he is brought to trial by the civil authorities before a code of conduct hearing at the University for the same action. It is clearly stated that the University will cooperate fully with law enforcement agencies and with other agencies in any program for the rehabilitation of students.

Procedural Principles

This section of the code was established to assure the student of procedural due process when charged with a violation of the Code of Student Conduct. The rights of a student charged with a violation of the code are enumerated. In drafting this list of student rights, an effort was made to include the requisites that courts have established for procedural due process, e.g., notification in writing of the charge, adequate time to prepare a defense, confrontation of the accuser, right of advice during hearings, right to remain silent, right to be present at the hearing, right to present evidence in his own behalf, right to cross-examine witnesses.

In addition to dealing with procedural due process, this section also assures the student that no University disciplinary sanction shall be imposed except in accordance with the provisions of the code; i.e., for a student action to be considered misconduct, it must be included in the published Code of Student Conduct as a specifically listed misconduct.

In this statement of procedural principles, the University guarantees the student the right of a hearing before a hearing panel of the Committee on Student Conduct if he is charged with a violation of

the code. This is a very important protection; e.g., if a member of the faculty charges a student with misconduct (cheating on test) and proposes to impose a unilateral sanction (an F for the course) the student can demand a hearing before a hearing panel of the Committee on Student Conduct. This section, then, not only attempts to assure the student of procedural due process in hearings but also assures the student of his right to a hearing.

Disciplinary Sanctions

This section is principally a listing of sanctions that may be imposed on students found guilty of misconduct. These sanctions range from administrative probation to permanent expulsion from the University. Actually, no student has ever been permanently expelled from the University; however, separation from the University is a common sanction imposed by hearing panels.

To indicate the seriousness with which the University faculty and administration view academic dishonesty, a special provision relating to students found guilty of academic cheating and plagiarism is included in this section. In all cases of students found guilty of cheating and/or plagiarism the hearing panel must recommend a sanction of separation from the University unless by a ⅔ vote the committee reaches a judgment of special mitigating circumstances.

This section also informs the student of the recording on official records of actions of disciplinary hearings. All actions which place the student on probation to the Committee on Student Conduct or separation from the University are made a permanent part of the student's academic record. Such notations are never removed from the student's records; however, if the student returns to the University and graduates the notation will be blotted out on all transcripts of the student's records issued by the Registrar's Office.

Misconduct

This section of the code was established to assure the students of substantive due process. The University has taken the official position that, with the exceptions outlined below, the University will hold the student responsible only for acts of misconduct occurring on campus. These exceptions are: (1) if a student is convicted of a serious crime, a felony, by a civil court; (2) if the student is formally charged with the commission of a felony of such a nature that his continued presence on campus would be potentially dangerous to the health and safety of the University community; and (3) if the University has available to it strong and convincing evidence that a student has committed a felony of such a nature that his continued presence on campus would be potentially dangerous to the University community. Under

these circumstances the University has the option under the code of charging the student with a violation of the Code of Student Conduct and to proceed with a normal disciplinary hearing.

The Code of Student Conduct lists twenty-six separate classes of actions that are considered misconduct which could subject a student to being charged under the code. If the student is found guilty, a University sanction ranging from probation to separation from the University may be taken. Some of the actions listed are single acts—e.g., knowingly furnishing false information to a hearing panel of the Committee on Student Conduct; furnishing false information to the University with intent to deceive; intentionally issuing bad checks; gambling; trespassing—and some are lists of a number of specific acts that are similar in nature—e.g., forgery, alterations, or misuse of University documents, records, or identification cards; theft, larcency, shoplifting, embezzlement, or the temporary taking of the property of another; illegal manufacture, sale, possession or use of narcotics, barbiturates, central nervous system stimulants, marihuana, sedatives, tranquilizers, hallucinogens, and/or other similar known drugs and/or chemicals; and any act of arson, falsely reporting a fire or other emergency, falsely setting off a fire alarm, tampering with or removing from its proper location fire extinguishers, hoses, or other fire or emergency equipment except when done with a reasonable belief of a real need for such equipment. As evidence of the seriousness with which the University considers academic dishonesty, the code goes into considerable detail in defining academic cheating and plagiarism.

In preparing the list of acts and actions considered to be misconduct, great attention was given to clearly stating each offense so that the average student could read and understand its meaning.

Administrative Procedures

This section of the code establishes the administrative arrangement by which the code is implemented. The primary responsibility for administration of the code is delegated to the Committee on Student Conduct. This committee is constituted as follows:

7 - Academic deans appointed by the Chancellor upon the recommendation of the Council of Academic Deans.

9 - Members of the faculty appointed by the Chancellor upon the recommendation of the Faculty Council Committee on Committees.

4 - Students appointed by the Chancellor upon the recommendation of the President of the Student Government Association.

6 - Members of the faculty appointed by the Chancellor. (These faculty members serve as chairmen of hearing panels.)

3 - Ex-officio members drawn from the administration—Dean of Men, Dean of Women, and the Vice Chancellor for Student Affairs.

29 Total Members

The principal charge to this large committee is to advise the chairmen, the Vice Chancellor for Student Affairs, and the Chancellor on matters relating to student conduct. This committee also has the authority to make recommendations for changes in the Code of Student Conduct. Final approval of changes is vested in the Office of the Chancellor.

The code provides that all charges of misconduct under the Code of Student Conduct are heard by a hearing panel which is made up as follows:

The dean or his representative of the college in which the student charged is enrolled.

Three faculty members.

Three students, including both men and women.

One faculty member who is a voting member and who serves as the panel chairman.

The procedure to be followed in creating a hearing panel is clearly specified. Once a decision that a student should be formally charged with a violation of the Code of Student Conduct (the procedure for reaching this decision will be discussed later) has been reached, the Vice Chancellor for Student Affairs is notified. He then contacts one of the six faculty members designated as a potential chairman of a hearing panel on a rotating basis—to inform him that there is a need for a hearing panel to be created.

Once a hearing panel chairman is chosen from the hearing panel roster, he then has the responsibility of obtaining the services of other members of the panel. As a practical matter, the hearing panel chairman normally asks the Office of the Vice Chancellor for Student Affairs to obtain the necessary members of the hearing panel. The three faculty members and the three student members are also called on a rotating basis. If three faculty members and three students cannot be obtained from the members of the Committee on Student Conduct, the faculty members may be chosen on a rotating basis from a supplemental twenty-five-member faculty panel, and the student members may be chosen on a rotating basis from a sixty-four-member alternate student panel.

How Charges Are Initiated

The administrative procedure for charging a student with a violation of the Code of Student Conduct is also well established. Anyone officially connected with the University—e.g., a member of

the faculty, a member of the administration, or a fellow student—may initiate charges against a student. As a practical matter, most charges are made by members of the faculty (principally for cheating or plagiarism) or by administrators in the Division of Student Affairs, principally campus police officers. A complaint may be made either in writing or through a visit to the Office of the Dean of Men or the Dean of Women.

Formal Charges

Once a charge is filed it is the responsibility of the Dean of Men or Dean of Women to make an investigation to determine whether or not there is sufficient evidence to justify the student's being formally charged by the University. A person making a charge does not have the right to demand that the student be formally charged, but as a practical matter a formal charge will almost always be made if the complainant is insistent.

Not all cases, however, are automatically referred to a hearing panel. In some cases the investigation of the Dean of Men or Dean of Women leads to the obvious conclusion that there has not been a violation of the Code of Student Conduct. In such cases, unless there is serious objection on the part of the complainant, the case is dropped. In other cases, the dean's investigation may indicate that there has been a violation, or the student may freely admit that the charge against him is true.

At this point the dean has two options. The case may be referred to a hearing panel, or it may be handled administratively. Cheating, plagiarism, and theft are almost always referred to a hearing panel. Minor violations, such as violations of the University's alcoholic beverage rules, gambling, etc., are usually handled administratively, with the consent of the student. In all other cases, the facts surrounding the individual case will be the determining factor in how it is handled.

For a case to be handled administratively, the dean must determine to his own satisfaction that there has been a violation of the Code of Student Conduct or the student freely admit that he has violated the Code of Student Conduct and the complainant and student charged with a violation be agreeable to the case's being handled administratively.

In the event the student wishes to waive his right to a hearing, and provided the Dean of Men or the Dean of Women wishes to accept jurisdiction, the Dean of Men or Dean of Women may impose any lesser penalty than separation from the University on a student for any violation of the Code of Student Conduct. Once a student has been informed of his rights, and of the penalty that will be im-

posed should a violation be found, and has knowingly and voluntarily accepted in writing the authority of the Dean of Men or Dean of Women to impose the penalty, he shall have waived his right to request a hearing before the Committee on Student Conduct. Prior to signing such a waiver, the student always has the right to request that his case be heard by a hearing panel of the Committee on Student Conduct.

If the Dean of Men or the Dean of Women decides that the student should be referred to a hearing panel of the Code of Student Conduct, the student is formally charged with a violation of the Code of Student Conduct. This formal charge is made in the form of a letter to the student in which the specific charge against him is outlined. This letter also informs the student of the time and place of the meeting of the hearing panel. Arrangements as to time and place are worked out with the student in conference prior to the issuance of the formal charge. This conference, also, is used to inform the student of his rights under the Code of Student Conduct.

The Responsibility of a Hearing Panel

On the day scheduled for a hearing panel meeting, the chairman of the hearing panel is given a list of the membership of the hearing panel. The faculty chairman also receives from the Dean of Men or the Dean of Women all documents and materials developed as a result of the investigation. This, of course, would include statements from the individuals making charges and other written materials related to the case. A list of witnesses that should be called, including names supplied by the charged student, is also included. If the charged student is to be represented by an attorney or friend, this information is also included.

From this point it becomes the panel's responsibility to conduct a hearing, to reach a judgment on guilt or innocence of the student charged, and, if a guilty decision is reached, to decide upon an appropriate University sanction. The hearing panel has the authority to impose any sanction short of separation from the University on its own. A recommendation of separation must be acted upon by the Vice Chancellor for Student Affairs and the Chancellor.

The following guidelines govern the panel in its deliberation and consideration of cases.

1. Normally hearings will be closed to the public unless the committee, on the request of the student, votes to hold an open hearing.
2. Decisions of the committee on violations of the Code of Student Conduct are to be based solely upon the evidence introduced at the hearing. Evidence of previous violations of Uni-

versity rules and regulations may be considered by the committee in arriving at a sanction after finding that the violation charged was committed, but such evidence may not be considered in any way by the committee in determining whether the violation charged was committed.

3. A vote that the violation charged was committed shall be rendered by a committee member only if he finds the evidence clear and convincing that the charged offense was committed. A majority vote of the members of the committee present shall be required for a finding that a violation was committed. A penalty recommendation involving separation from the University requires a vote of two-thirds of those present.

Appeal Procedures and Implementation of Sanction

Any student found guilty of a violation of the Code of Student Conduct has the right of appeal to the Office of the Chancellor. The Office of the Chancellor has established the following guidelines to be followed by students wishing to make an appeal:

1. An appeal is not a request for a new hearing at a higher level or a re-hearing because of dissatisfaction with the results of an earlier hearing.
2. An appeal should be based upon a particularized claim of irregularity, error, unfairness, prejudice, or other factors preventing the hearing panel from reaching a just decision.
3. An appeal must be submitted in writing and should indicate clearly and specifically the grounds upon which the appeal is based.

After the Chancellor has reviewed the written appeal, a meeting is held with the student and other interested parties. Based upon this meeting, the Chancellor makes a final decision of the disposition of the case.

Once a hearing panel has made its decision and administrative procedures of getting this decision approved have been completed, the case is returned to the Office of the Dean of Men or Dean of Women. These offices are charged with the administrative responsponsibility of implementing the decision of the hearing panel and of the Office of the Chancellor. Notification of the student of the University's corporate judgment is made by the Dean of Men or Dean of Women, and all post-hearing counseling is handled by these offices.

Relationships Within the University

The Code of Student Conduct is just what the name implies—with the emphasis on the student. It is a code applicable only to students.

The operation of hearing panels is principally in the hands of the faculty and students. The administration is involved in judicial procedure, principally in administering the code up to the time a case is actually handed over to a hearing panel and in implementing the decisions of the hearing panel after the hearing has been completed. Legally and actually the power to make a decision to separate a student from the University is vested in the Office of the Chancellor; however, as a practical matter, he relies upon the considered judgment of hearing panels in these cases.

The Student Government Association's relationship to the code is principally through the recommendations of student members to serve on the Committee on Student Conduct. This is accomplished through recommendations of the president of the Student Government Association to the Office of the Chancellor.

The campus police department has essentially the same relationship to the Code of Student Conduct and hearing panels as a city police department has to the law and city court. Campus police officers apprehend alleged violators of the code and refer evidence to the hearing panel through the Dean of Men or the Dean of Women. Campus police officers may appear as witnesses at hearing panel meetings.

In addition to the judicial system established by the Code of Student Conduct, the University has other student-instituted and student-operated judicial systems (e.g., the University Court, the judicial branch of the Student Government Association; Men's Housing Review Board; Panhellenic Council Judicial Committee). These judicial bodies hear cases of alleged violations of rules established by the various segments of student government (e.g., Student Government Association, Men's Dormitory Association and Panhellenic Council). These judicial councils and committees work with the consent of the governed. Decisions of these judicial bodies are not appealable directly to a hearing panel; however, a student may exercise his right of a hearing on any charge against him. Technically, a new charge drawn specifically from the list of offenses in the Code of Student Conduct must be made against the student. Thus, a student has the option of accelerating his case from a student judicial body to the University's judicial system under the Code of Student Conduct. This has happened only three times since the Code of Student Conduct was put into effect in 1969.

Evaluation of the Code of Student Conduct

Perhaps the greatest strength of Louisiana State University's Code of Student Conduct is the fact that it places the responsibility for determining whether or not a violation of the Code of Student

Conduct has occurred in the hands of the faculty and students, those who should be most concerned with actions of student members of the University that might be an assault on the University's efforts to accomplish its basic educational goals and purposes. The code also assures the student of substantive and procedural due process.

Although there are some weaknesses of the Code of Student Conduct from an administrative viewpoint, perhaps the one weakness that should be mentioned is the fact that each hearing panel has an entirely different composition. Often similar cases are heard and, although the decision of guilt or innocence may be identical, quite often the penalty assessed varies greatly from case to case. This, however, may not necessarily be much of a weakness because it is the group that hears the case and gathers and evaluates the facts that is in the best position to make a decision as to a suitable University sanction in each and every case of guilt under the code.

Specific Examples

How would a hypothetical case of academic cheating be handled under our code? Let us assume that a professor in engineering detects a student using crib notes while taking his mid-term exam. He walks to the student's desk and picks up the student's test paper and the crib notes written on the inside of a matchbook. The professor then takes this material to the Dean of Men and indicates that he wishes to charge the student with a violation of the Code of Student Conduct. The Dean of Men would then have a conference with the student and inform him of the charge made by his professor. He will also inform him of his rights under the code and give him a written letter outlining the charges against him, who has made the charges, and when his hearing will be held. At this point, a hearing panel chairman would be selected and a hearing panel created.

Approximately ten minutes before the hearing panel meeting, the Dean of Men would turn over to the chairman of the hearing panel all of the evidence, the name of the student being charged, the name of the professor making the charge, and the result of his investigation. The hearing panel would then hear both sides of the case and reach a decision as to innocence or guilt. If the decision is guilty as charged, then the panel must decide upon an appropriate sanction. In cheating cases a decision of guilt carries with it an automatic minimum sanction of separation unless by a two-thirds vote the hearing panel recommends a sanction less than separation.

Let us assume that in this particular case the panel decides to recommend separation for the remainder of the semester. The minutes of the hearing panel are typed and signed by the hearing panel chairman. These minutes are forwarded to the Vice Chancellor for Student

Affairs. He reviews the minutes to make sure that all provisions of the Code of Student Conduct have been followed in creating the panel, in the panel's hearing procedure, and in the votes taken of guilt and innocence and on the votes taken for sanctions. The Vice Chancellor then prepares a letter of transmittal to the Chancellor in which he outlines that all procedures have been followed.

The period between the hearing and the delivery of the minutes to the Office of the Chancellor is normally three days. During this time, the student has the right to file his appeal. If no appeal is filed the Chancellor normally acts on the recommendation within twenty-four hours. If an appeal is filed the Chancellor normally hears the appeal before reaching a decision on his action. After the Chancellor signs the recommendation of the hearing panel copies are forwarded to the Dean of Men and to the Vice Chancellor for Student Affairs. The Dean of Men then informs the student of the official action of the University and assists him in leaving the University.

Let us look at a second, somewhat different case. Let us assume a bicycle was stolen from in front of the LSU Student Union building. The owner reports the missing bicycle to campus police authorities who later recover the bicycle and question the person who was in possession of it. Campus Police then refers the student who allegedly stole the bicycle to the Dean of Men. At this point the Dean of Men would have an interview with the owner of the bicycle to determine his wishes in this matter. Our approach to a violation of the code that affects another student is a little different from a violation of the code that affects the University as a whole. Assume that in this particular case the student who owned the bicycle is not anxious to charge the other student with theft but would like to charge him with temporarily taking of property of others. Under these circumstances the Dean of Men would then interview the student who had been charged with taking the bicycle. Let us assume in this particular case that the student freely admits temporarily taking the bicycle and requests that the Dean of Men take jurisdiction of the case. Under these circumstances the Dean of Men would in all probability take jurisdiction of the case, and upon receiving from the charged student a written statement saying that he was in fact guilty of temporarily taking the property of others and requesting that the Dean of Men take jurisdiction of the case, he would assess an appropriate University sanction. In this case the sanction probably would be probation to the Dean of Men's Office for a period of one or two semesters.

THE UNIVERSITY OF WISCONSIN-MADISON STUDENT JUDICIAL SYSTEM, AN OVERVIEW

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Like many other campuses, over the last five or six years the University of Wisconsin-Madison has experienced a dramatic increase in both the level and intensity of student concern for and direct involvement in a variety of national, local, and campus issues. The tactics of protest were sometimes violent and often seemed to threaten the University's ability to continue functioning. Beginning especially in 1966-67, each mass student action on campus resulted in the arrest on one civil charge or another of a score or more students. The earliest of these protests found a campus disciplinary system which had remained essentially unchanged for at least twenty years. It was based on a code of conduct for students with which we are all familiar—one which included a simple prohibition against misconduct. In essence, it said, "Be good. We'll tell you when you are bad." It reminds me of a piece of graffiti: "All people are divided into two groups, the righteous and the unrighteous. The rightous decide who's who."

Under that system, the less serious cases of misconduct were decided by the Office of the Dean of Men or Dean of Women, often in conjunction with the dean of the student's college. The more serious cases were always heard by an all-faculty Student Conduct Hearing Committee. Students could appeal their decision to an all-faculty Conduct Appeals Board. The disciplinary records of that period show a great deal of emphasis on the *attitude* of the student charged with misconduct (was he or she repentant?) and on long letters of explanation and sympathy to his or her parents. There is little evidence in those files of even eight years ago to suggest that most students charged with misconduct were much surprised at the standards to which they were held accountable or offered any serious objection to the system which heard their cases.

It was the student power movement on this campus which first began to press for serious change in the system of justice. But rather than focusing its attack on the *basis* of the existing system, the student power advocates—at least in their earliest stance—urged the *inclusion* of students in the process of setting standards and hearing charges of their violation. Before that movement (which found, by

the way, many faculty and administrative supporters) could bear much fruit, however, the violent protests against recruitment on campus by Dow chemical in 1967 began to shake the campus judicial system at its roots. Out of these protests came court decisions which directly challenged both the University of Wisconsin's conduct code for its "overbreadth" and its procedures in cases of immediate suspension for their failure to conform to minimum due process requirements. Court decisions in other areas of the country seemed to have serious implications as well for other disciplinary practices on campus. Even before the final resolution of these court cases, the University Regents adopted a revision of the conduct code which set forth prohibited non-academic conduct in more specific language. Allow me to quote:

> To permit it to carry on its functions, the University may discipline students in non-academic matters in these situations:
> (1) for intentional conduct that seriously damages or destroys University property or attempts to seriously damage or destroy University property. . .
> (2) for intentional conduct that indicates a serious danger to the personal safety of other members of the University community. . .
> (3) for intentional conduct that obstructs or seriously impairs or attempts to obstruct or seriously impair University-run or University-authorized activities. . .

At the same time the faculty made some changes as well in the procedure of discipline on campus. Responding to the student power initiative, they provided for the appointment of students by student government to the Committee on Student Conduct Hearings and to the faculty committee whose responsibility it was to study the whole of student conduct and discipline. The committee hearing appeals was to remain composed entirely of faculty.

Even this revised system could not withstand the pressure of events, however. By that time the student power movement had progressed beyond "mere participation" in the system. Student government on campus refused to appoint the four students who were to sit with the five faculty on the Student Conduct Hearing Committee. The student contention, or at least the contention of the student leadership, was that students should not participate in determining violations of regulations over whose development students had had no effective control. To complicate the issue further some faculty began to question the propriety of the University's disciplining students in *any* case, on or off campus, for *non-academic misconduct*. They asked, "Was not academic conduct the prime interest of the University? Why not rely *solely* on the civil authorities for protection

in non-academic areas?" This discussion culminated in November 1970 when the Faculty Senate approved the statement, "We recommend that University discipline be enforced only for strictly academic offenses. . ."

The most serious weakness of the system which provided for faculty predominance in disciplinary hearings was the inability of the committee hearing system to provide the reasonably prompt yet thorough hearings everyone agreed were essential. The dramatic increase in the number of cases of serious consequence called for far more time than teaching faculty could reasonably provide. The resulting delays in settling cases were underlined by a more vocal public concern for the need for prompt action against violence on campus.

The present system dates, coincidentally, from the same month the Faculty Senate voted its recommendation that the University withdraw from enforcement of student discipline for non-academic offenses—November 1970. Based on the statements of prohibited non-academic conduct mentioned earlier, it is an *entirely administrative system.* University discipline is defined as action which threatens "the status of an individual as a student." It includes probation, resignation, or leave for misconduct, cut-off of student financial aids, suspension, and expulsion. The Chancellor is required to designate an "Investigating Officer"—the Dean of Students—who receives and investigates reports of alleged misconduct. Most of the reports come from University police, but others come from faculty, residence halls staff, and students. If the original report seems to warrant serious investigation, the Dean of Students Office invites the student by letter to come in to discuss the incident. That first letter contains a brief description of the alleged misconduct, informs the student that University disciplinary action is a possibility, and indicates that, should the student choose not to contact the office within a specific period of time, proceedings will go ahead on the basis of what other information was available. All along the procedure the student has the right to have his own counsel present or to refuse comment.

After having offered the student an opportunity to hear the details of the allegations and make what response he or she wishes to make in the office, the Dean of Students may himself take disciplinary action less severe than suspension or expulsion. The student's appeal in such cases is to the Chancellor.

If, however, the Dean believes suspension or expulsion is the appropriate sanction, he must prepare a statement of charges to be sent by certified mail, return-receipt-requested, to both the Madison and home addresses of the student. Those charges contain a summary of the dates, times, places, and events on which the charges are based, a citation to and quotation from the rule which the student is alleged to have violated and a complete copy of those rules including Uni-

versity disciplinary procedures. The student is also notified that he has ten days in which to request a hearing. That request must be made in writing to the Chancellor and must include an answer to the charges. Upon the student's failure to request a hearing or answer the charges, the Regents of the University, who exercise direct, final authority in these serious cases, may accept the allegations and proposed disciplinary sanction contained in the statement of charges as true and binding.

Should the student, however, request a hearing, the Chancellor appoints a hearing examiner who immediately takes charge of the case file and schedules a hearing. The examiner has always been a member of the Law School faculty. He is paid for his expenses in service as hearing examiner. He issues the necessary subpoenas, administers oaths, and is empowered to maintain order in the hearing.

At the hearing, the University is represented by a member of the State Attorney General's Office. The student may be represented by counsel at his own expense. The burden of proof is on the administration to establish "by a preponderance of the credible evidence that conduct violative of University rules occurred." The hearing is public unless the student requests a closed hearing or the examiner determines that a closed hearing is necessary in extraordinary circumstances. A complete transcript is made, a copy of which is available to the student at cost.

The student has the right to confront and cross-examine witnesses against him, the right to present evidence and be heard on his own behalf. It is the examiner's duty to prepare findings of fact and decision in the case. These are sent to the Regents, to the student, and to the University administration. Either party may file exception to the examiner's decision and request a hearing before the Regents. The Regents' decision then is final.

The great majority of cases in which the Dean of Students has filed charges, however, have not gone before the hearing examiner. Instead, the student has exercised his option of resigning under charges (in effect has accepted the sanction proposed by the Dean as investigating officer) or has agreed to a plea of "no contest" and has accepted a specific sanction. Such arrangements are always placed in writing and have the effect of Regents' orders.

A final provision under this system has to do with *temporary suspension*. A student may be temporarily suspended by the Chancellor pending a full hearing for reasons related to the student's safety or well-being or for reasons relating to the safety or well-being of members of the University community or University property. Before issuing such an order, the Chancellor must satisfy himself as to the reliability of the information and the need for such drastic action by the University and must provide the student, if at all possible, with an opportunity to appear before him, to hear the allegations,

and to make what response he wishes to make *before* the decision is reached on a temporary suspension.

The discussion up to this point has been restricted to incidents of *non-academic misconduct*. The procedures for dealing with *academic misconduct* are much less specific than those for other infractions. Only last May did the faculty approve an official definition of academic misconduct and a statement of penalties which includes lowering of grade, reprimand, assignment of additional course work, disciplinary probation, suspension, or expulsion. Prior to May, the University operated as if these were a kind of unwritten, common law of the campus. There are no well defined disciplinary procedures for alleged academic misconduct. Individual instructors who are presented with allegations against students in their courses must pursue their own investigation and may themselves take purely academic sanction—lowering of grade or assignment of additional work. They may not invoke University disciplinary action—i.e., disciplinary probation, suspension, or expulsion. Should they feel that a case warrants serious action, they must file a report with the Dean of Students as investigating officer who then begins the procedure already described.

There is a student court on campus composed of thirteen judges who are appointed by student government from a list of eligible students provided by a student-faculty committee, but Student Court has jurisdiction *only* over student parking and vehicle registration violations and an occasional student organizational dispute.

Perhaps it would help to illustrate the working of this system to discuss three partially real, partially hypothetical examples of its operation.

1. During a mass protest and confrontation with poice on campus, a student was arrested by campus police. It was alleged in the report that he threw a rock at a policeman who was on duty on campus at the request of the University. The Dean of Students wrote the student inviting him to come in to discuss the allegations. The student called and declined the invitation. After further investigation of the report and after consulting with the Assistant Attorney General who would represent the University, the Dean of Students prepared a statement of charges, citing the Regent Bylaw which permitted the University to discipline students "for intentional conduct that indicates a serious danger to the personal safety of other members of the University community." The charges called for expulsion. Within the ten-day period provided, the student's lawyer filed a request for a hearing and denied all charges. The Chancellor appointed a hearing examiner who took charge of the case, issued subpoenas for both prosecution and defense witnesses, and scheduled a hearing. The hearing took approximately four hours one morning, much of which was devoted by the defense to the presentation of character witnesses. The

examiner filed his summary, findings of fact and decision in about three weeks. The student was found guilty; but rather than expulsion, the examiner directed suspension for two semesters. The Regents accepted the findings and ordered the decision.

2. A second case involves a student arrested on a charge of forgery arising out of his having taken course tests under the name of another student actually registered for the course. In response to the first letter from the Dean of Students, he came in and readily admitted the entire incident. He indicated that he did not intend to obtain counsel and wished to forego the hearing. Instead, he resigned under charges with the written stipulation that he might reapply for admission after one year.

3. A final case involved a male student who threatened four women in a dormitory room. No one was harmed. The investigation revealed evidence that the male student needed psychiatric help. The student and his attorney agreed to disciplinary probation with a psychiatric referral. There was no hearing outside the Dean of Students Office.

Let us conclude by summarizing what is believed to be some of the essential goals of this system of procedure:

1. To have a set of conduct rules which are as precise as possible and of which all students are aware.

2. To provide the student with an opportunity to talk with some University official (with or without his lawyer present) before charges are filed.

3. To allow the student an opportunity to withdraw under charges and thus avoid the cost and time involved in a hearing.

4. To provide the student with a speedy determination of his case.

5. To have both the procedures and the punishment fit the student's act. Serious cases—those involving suspension or expulsion—have available the full hearing procedure; while less serious cases—those involving disciplinary probation at most—are handled by the Dean of Students with appeal available to the Chancellor.

6. To maintain as great a degree of flexibility as possible in our response to student misconduct.

Given the specific circumstances of the University of Wisconsin-Madison, it is believed that this system of judicial process on campus is serving the community well.

THE UNIVERSITY OF GEORGIA STUDENT JUDICIARY: AN ALL-STUDENT, INSTITUTIONAL DISCIPLINARY SYSTEM

EARL D. HARRIS
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History and Philosophy

The Student Judiciary at the University of Georgia is an all-student court system. Various courts hear and adjudicate all cases of disciplinary action on the campus, in addition to being the Judicial Branch of the Student Government Association.

This judiciary had as its founding the concept of student input into the total University community. Prior to its creation, the University had an entirely administrative disciplinary system. This administrative system's powers were dispersed and the disciplinary functions were handled by various individuals and departments throughout the University.

In an effort to centralize and standardize the disciplinary functions, to conform to guidelines of due process promulgated by federal courts, and to facilitate student input, the concept of an "all student" judicial system began to take form.

An all-student judicial system provides the opportunity for students to accept a full and responsible position in the University community. Students, who were then making recommendations concerning University regulations through the Student Senate, would have the opportunity of enforcing the rules under which they lived by judging the actions of their peers and assessing appropriate disciplinary measures when regulations were violated. At the same time, students who appeared as defendants before the student courts realized that they were being held accountable for their actions by their contemporaries, contemporaries who were obligated to live under and abide within the same regulations under which the defendant was being charged, contemporaries who faced the same trials, pressures, and temptations as did the defendant, contemporaries who understood student problems from present, firsthand experience.

This concept of an all-student judicial system was presented to the Student Senate as a proposal to amend the *Student Body Constitution*. This amendment was adopted as Article III of the *Student Body Constitution* by the student body in an April 1968 referendum. The amend-

ment created the Student Judiciary as the Judicial Branch of the Student Government Association. The University Council, the University of Georgia's highest legislative and policy-making body, by action in its June 1968 meeting, and University President Fred C. Davison by separate document delegated to "the Student Judiciary . . . authority to conduct hearings and to adjudicate cases arising under University Student Regulations."

The first appointments to the various courts were made in November 1968, and the Judiciary began hearing cases in January 1969. At this time the Judiciary was composed of the Judicial Council, two divisions of the Main Courts, and ten Residence Courts (later renamed Campus Courts). Its jurisdiction was limited to actions arising from the student individual conduct regulations, actions of the Executive Branch of the Student Government Association, and interpretations of the *Student Body Constitution.*

Article III has been amended several times since 1968, expanding the number of courts and extending jurisdiction to the student organization regulations and the student motor vehicle regulations. Presently, only one court is specifically established under the *Student Body Constitution* with the provision that lesser courts may be established by order of the Chief Justice as the need arises. This one court, the Judicial Council, and its Chief Justice are responsible for all administrative aspects of the Judiciary, the establishment of lesser courts, the assignment of all cases and appeals, the establishment of procedural guidelines for the courts' operations, and the training of all justices appointed to the system.

Since 1968 the Student Judiciary at the University of Georgia has grown in size, ability, and responsibility. Presently, it has the responsibility of handling all disciplinary cases and appeals on the University of Georgia campus and of making internal rulings, interpretations, and decisions as the Judicial Branch of the Student Government Association. The decisions of the courts of the Judiciary are final except when the court might recommend the termination of a student-University relationship (e.g., probated suspension, suspension, or expulsion of a student). The system has developed into one that has enough flexibility to meet the increasing needs and changes in the University Community. In the 1971-72 school year, over fifty student justices served in the eighteen courts of the Judiciary and heard about five thousand cases and appeals.

Organization

Although the *Student Body Constitution* provides a great amount of flexibility in the Student Judiciary's structure, the Judiciary is essentially a three-level court system. Usually cases originate on

either the first or second level, and the original decision is appealable to the next level. The third and highest level has certain administrative and policy-making duties as well as its appellate jurisdiction.

The first level consists of the Traffic Courts and the Campus Courts. Each Traffic Court consists of one justice. The cases in the Traffic Courts are initiated by students who receive parking tickets. The appeals are written, and the student may also appear before the court and present oral arguments. This court is not empowered to hear appeals of tickets given for other than non-moving violations of the "Student Motor Vehicle and Bicycle Regulations," nor can the court assess any disciplinary measure other than the statutory fine set for the violation in the regulations. The Traffic Court justices make decisions only as to whether the ticket was rightfully given and, if so, whether there were any mitigating circumstances which justified the student's receiving the ticket. The court's only decision is to affirm or dismiss the ticket.

The Campus Courts primarily have jurisdiction over cases of alleged "minor" violations of conduct regulations ("minor" being defined as a violation which might not normally result in the suspension or expulsion of a student). The courts consist of three justices each. The cases heard before the Campus Courts originate by the filing of a "complaint" against a student by the Office of Student Judicial Affairs, an appropriate University department, or another individual. The "complaint" is filed with the Judicial Council and then assigned to the Campus Court.

The second or intermediate level courts in the Judiciary are the Main Courts. There are a number of divisions of the Main Court, each composed of five justices. One of these justices is selected as the division's chief justice and another as clerk. The chief justice is responsible for court attendance and the orderly proceedings and business of his court, while the clerk is responsible for the court's records. The Main Courts primarily hear appeals from the decisions of the Traffic and Campus Courts and exercise jurisdiction over alleged violations of organization regulations, major conduct regulations, and violations and appeals of traffic tickets (other than parking tickets).

The cases come to the Main Courts in the same manner as cases filed for the Campus Courts. The Main Court, after a finding of guilty, may assess any disciplinary measure, including the recommendations of suspension or expulsion, or measures in addition to or in lieu of set fines in traffic cases. Appeals of lower court decisions may be filed with the Judicial Council by the defendant. They are then assigned to a division of the Main Courts. The Main Court may dismiss the appeal, order an appellate hearing, and/or modify the decision of the lower court based only on the appeal and the lower court record.

Various other courts may be established on either the lower court or Main Court level as the need arises. These courts would be ones of limited jurisdiction established to handle specific problems. Although none have been established to date, an example might be a court which would handle cases involving professional ethics in a professional school, such as the School of Pharmacy.

The Judicial Council is the highest court in the judicial system. Not only is it the highest appellate court, but it also promulgates policy and procedure, performs administrative duties for the system, and may hear any case it so chooses on first incident. This court also hears all cases and makes all rulings and interpretations of the *Constitution* and Statutes of the Student Government Association and hears appeals of the original decisions of the Main Courts.

The Judicial Council consists of seven justices who are appointed to serve terms of "good behavior," unlike the other justices of the Judiciary who are appointed for one-year terms. The Judicial Council elects from its membership its chief justice and clerk. Each member of the Council is assigned an area(s) of administrative responsibility. One of the more important functions that may be assigned to a member is that of liaison to one of the lesser courts. Here the liaison works with the courts in his area by training new justices, assisting in solving procedural or personnel problems, and assuring the continuity of disciplinary measures.

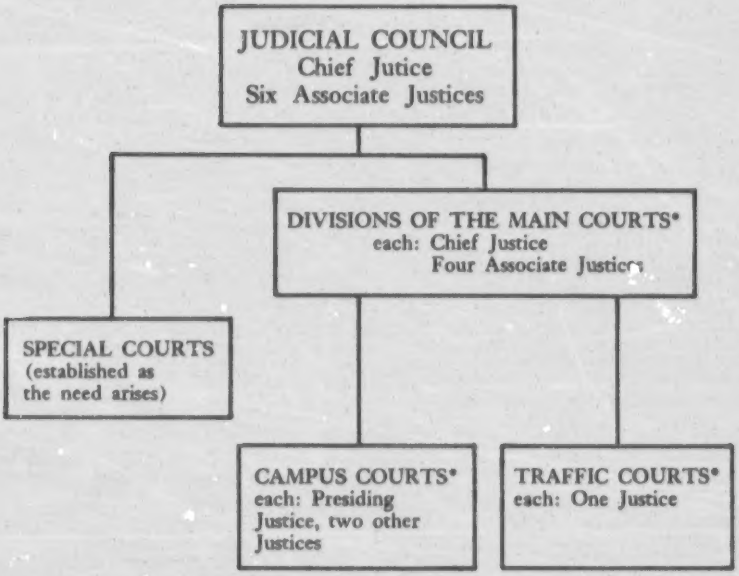
The Chief Justice of the Judicial Council is responsible for the office operations of the Judiciary Office. He has direct supervision over the personnel, assignment of cases, scheduling of court meetings, and physical and fiscal administration of the Judiciary. Known also as the Chief Justice of the Student Judiciary, he is the Judicial Council's liaison with the public, the other branches of the Student Government Association, and the University administration and faculty. He further acts on behalf of the Judicial Council in its absence, with all his actions subject to review by the Council.

All justices who serve on the various courts are appointed by the Student Body President. Each appointment is examined by the Student Senate Judiciary Committee and approved or rejected by the Student Senate. Once a justice has been appointed and approved, he is trained by the Judicial Council as to what ethical considerations are expected and how the total judicial system operates. Before he sits as a member of a court, he will usually observe one or more actual hearings.

Each justice on the lesser courts is appointed for a one-year term of office. He may be appointed to a higher court before the expiration of his term or may be reappointed to the same court at the end of his term. A justice of the Judicial Council is appointed to serve for "good behavior" or until he is no longer a student at the University. All

justices are subject to impeachment, the trial of which would be held by the Student Senate.

ORGANIZATION



*The number of the various lesser courts may vary and is determined by the Judicial Council. All lesser court justices are appointed for one-year terms by the Student Body President; justices of the Judicial Council are appointed for terms of "good behavior".

Once the appellate remedies within the Student Judiciary are exhausted, the decisions of the student courts are final in all cases except when the disciplinary measure imposed is probated suspension, suspension, or expulsion. If probated suspension, suspension, or expulsion is imposed by the courts and all appeals within the system have failed to remove such measure, a written appeal of the disciplinary measure may be filed with the Dean of Student Affairs. Should the defendant receive an adverse decision from the Dean of Student Affairs, he may file another appeal to the University President. The student's final appeal is to the University System Board of Regents.

Should any of these administrative appeals result in reversal of the disciplinary measure, the Judicial Council shall determine what alternate disciplinary measure shall be imposed.

Two other groups within the University work closely with the Student Judiciary to form the overall judicial system. The Department of Student Judicial Affairs works with matters relating to the University Regulations and the Student Judiciary. This University office receives reports of alleged violations, investigates the incidents, and decides if the case should be referred to the courts of the Student Judiciary. A large majority of all "complaints" filed against students are made through this department. The staff members of this office also advise the student-defendants of their rights in the Judiciary and how their hearings will proceed. At times, these staff members may advocate a case before the courts.

Each member of this staff also serves as an advisor to one of the groups of courts in the Student Judiciary. However, they are not permitted to attempt to direct the court's decision. They offer advice on how the court can improve its hearing, its wording of decisions, and the like.

The Department of Student Judicial Affairs also advises the Defender-Advocate Society, a program of the Executive Branch of the Student Government Association. This organization is composed of students who are familiar with the rules of procedure governing the student courts. Members of this organization may advocate cases in the University's behalf before the courts of the Student Judiciary, or may, upon request, serve as a defender for a student who is charged before the courts. They do not constitute a "bar association" for the University but do serve the ends of justice by assisting to bring all the facts forward for the court's consideration.

Relationships

From the Judiciary's beginning there have been constant successful efforts to keep the Student Judiciary autonomous and at the same time insure that adequate input is maintained with the other phases of the University community. These channels of input are necessary for the constant internal evaluation the Judicial Council makes of the total system. At the same time, the Judiciary has been careful not to allow any facet of the community to monopolize input to the extent that any undue pressure is placed on the system which might jeopardize the objectiveness of the courts.

Along with its duties to adjudicate disciplinary cases, the Student Judiciary serves as the Judicial Branch of the Student Government Association (SGA). The Judicial Council hears cases of violations of and interprets the *Student Body Constitution* and the Statutes of the

SGA and has jurisdiction over the actions of the Executive Branch. The executive branch, in turn, makes all appointments of justices to the courts of the Student Judiciary, and the Senate approves or rejects these appointments.

The executive officers and legislative branch of SGA are the elected representatives of the student body. As such, they are valuable tools to determine the student body's evaluation of the judicial system. The Judicial Council maintains direct contact with the Student Body President and with the Judiciary Committee of the Student Senate. Suggestions for structural and procedural changes flow directly to the Judicial Council and are given serious consideration.

The Department of Student Judicial Affairs is the University administration's "counterpart" to the Student Judiciary. The staff members of this department serve as advisors to the courts of the Judiciary. In this capacity they have the opportunity to make objective evaluations of the system's operation.

It is also the function of the Student Judicial Affairs Department to determine which cases the University will send to be adjudicated before the Student Judiciary. They may represent the University's interest before the Judiciary's courts themselves, or they may assign the case to a student advocate and advise with him in its preparation and presentation. Through this department, the University administration's and faculty's viewpoints are brought to the attention of the Judiciary.

It is, however, always acceptable for others to present cases before the courts of the Judiciary or make suggestions for change to the Judicial Council. Although individual members of the faculty or administration (except for the members of Judicial Affairs) rarely appear before any of the courts of the Student Judiciary except as a witness, any person of the University community (administrator, faculty, staff or student) may file a case in the student courts or may submit a brief to the Judicial Council suggesting a procedural change.

The Campus Police Department is the protective service arm of the Division of Public Safety at the University of Georgia. Each campus policeman and policewoman is a student—from the head of the department to the newest patrolman. This is a highly selective group of individuals who complete about 200 hours of formal professional training in the University of Georgia's Northeast Georgia Police Academy as well as participate in weekly formal in-service training sessions.

Because these sworn officers are charged with the enforcement of state laws and the protection and safety of the University community, there has been an adherence to "professional objectivity" by campus police in their numerous appearances before the courts of the Student Judiciary. These officers' duties do not encompass the enforcement of

student conduct regulations, but their appearance before the courts is incidental to an investigation of an infraction of the law that also happens to be concurrently a violation of University Regulations. The police officers appear only as witnesses and testify only to facts. They have maintained a position that the disposition of any case is best left in the hands of the student courts. The campus police and the entire Division of Public Safety have willingly served as a reliable, objective information source for the student courts.

The Division of Public Safety has been totally cooperative with the Student Judiciary and has actively encouraged suggestions and constructive criticism from the courts. They have considered the courts' disposition of cases as a form of input to their division. Suggestions from the Judiciary have been given serious consideration immediately.

Jurisdiction

The jurisdictional authority for each of the courts of the Student Judiciary is established in the Judicial Council by the *Student Body Constitution*. The Judicial Council then delegates the jurisdiction as it establishes the lesser courts. The *Student Body Constitution* defines the jurisdiction of the Judicial Council as:

> a. Jurisdiction. The Judicial Council shall have jurisdiction over:
>
> (1) Violations of all rules, regulations, and policies governing individual student conduct, student organizations, and student motor vehicle operation promulgated in properly authorized methods.
>
> (2) All actions of the Executive Branch of Student Government.
>
> (3) Interpretation of the Constitution and Statutes of Student Government.
>
> (4) Offenses against the Constitution of Student Government.
>
> (5) Appeals from the Main Courts.
>
> (6) Appeals from individuals within an organization regarding actions of that organization.

A great majority of the cases adjudicated by the Judiciary are ones arising from alleged violations of the University Regulations. These Regulations are the official record of all individual conduct and traffic regulations and rules affecting student organizations and group activities.

The University Regulations are designed to cover all phases of the student's campus life and are promulgated through a long system

of suggestion and approval. The formulation procedure for the University Regulations reads:

> Any student, faculty member, or administrator, can initiate any revision of, addition to, and deletion from University Regulations contained in this handbook. Recommendations must be submitted to the Student Senate. The Senate may reject the recommendation or forward it with an endorsement to the Dean of Student Affairs. The Dean shall forward the Senate's recommendation with comments to the Faculty Committee on Student Affairs. The Committee, in turn, shall send the Senate's recommendation with comments to the University Senate. In the event the Student Senate initially rejects the recommended change, and the sponsor desires, it may be submitted directly to the Dean of Student Affairs. However, the action of the Student Senate shall always accompany the recommendation.

As is indicated, these Regulations are designed to cover only the actions of students. Therefore, the jurisdiction of the Student Judiciary extends only to students. The Rules of Procedure of the Student Judiciary defines student as:

> "Student" or "Student-defendant" shall refer to all persons enrolled in a course(s) on the Athens, Georgia campus of the University of Georgia, any group of said persons, or any University recognized organization of said persons.

Jurisdiction has been reserved by the Judicial Council to hear all cases and matters involving the Student Government Association and the *Student Body Constitution*. All other areas of jurisdiction have been delegated to the lesser courts with the reservation of review by and appeal to the Judicial Council.

Rules of Procedure

The *Student Body Constitution* charges the Judicial Council with the establishment of "procedural regulations and ethical considerations for the Student Judiciary to promote justice and insure fairness for the individual student, the University, and the public interest." To meet this charge the Judicial Council has promulgated a "Code of Ethics for Justices" and a "Code of Ethics for Counsel," thirty separate rules governing procedures, and some sixteen "Student Judiciary Regulations" governing internal functions. All the above are collected in the *Rules of Procedure and Regulations of the Student Judiciary (RPRSJ)*.

The *RPRSJ* are very comprehensive and yet are designed so that

with a small amount of study any student should be able adequately to represent himself before any of the courts. Although a thorough evaluation of these writings is beyond the scope of this paper, a brief explanation will be given of the general content of each of these documents.

The "Code of Ethics for Justices" is simply a set of canons which define what the campus community expects of its justices. It is not special conduct regulations to be followed only by justices, but is designed to help protect the integrity and objectivity of the courts, their members, and those appearing before them.

The "Code of Ethics for Counsel" serves a similar purpose to the Code for Justices. It is promulgated to insure that the conduct, both inside and outside the courtroom, of counsel is such that the true interest of the courts will be protected, that interest being to insure fundamental fairness with all the guarantees of due process. It applies equally to any and all counsel, lay or professional, who appear before any of the Student Judiciary's courts. Counsel violating any of the canons set forth in the code may be cited for "contempt of the student judiciary" and appropriately disciplined.

The Judiciary's *Rules of Procedure* is a comprehensive set of thirty rules which govern the procedural functions in and before the various courts. The "Preamble" of the Rules of Procedure probably best defines their purposes. It states:

> The following *Rules of Procedure* are adopted and set forth by the Student Judiciary to guarantee due process and fundamental fairness to all students who come before the various courts of the Student Judiciary. Except for a general foundation upon federal court cases which establishes basic guidelines ensuring due process, the proceedings of student court are not conducted as though the court were a court of law.
>
> The proceedings outlined below in these *Rules of Procedure* are devised to guarantee that a student who comes before a court of the Student Judiciary will be notified in advance of all allegations made against him, will be given a hearing before a court of the Student Judiciary, will be permitted to appear alone or with any other person of his choice to advise or assist him in his hearing before the student court, will be given an opportunity to present any "evidence" and witnesses in his behalf, will be permitted to question and "cross-examine" all witnesses against him, and will be presumed innocent of all allegations against him until proven otherwise. All proceedings of the Student Judiciary are conducted in an informal manner so long as

such informality does not hinder or obstruct the basic fact-finding function of the student court.

There is no place in the Student Judiciary for the presentment and argument of federal and state law or case law. The courts of this Student Judiciary are not courts of law. For this reason questions of law will not be considered.

The *Rules of Procedure* which govern the disciplinary cases before the Student Judiciary are promulgated by the Judicial Council. The thirty rules have numerous subdivisions and are divided into eleven titles or sections. The detailed review of each of these rules would become unduly technical and be far beyond the scope of this paper; however, the rules do encompass provisions which are basic for any disciplinary proceeding. Although these rules do afford certain guarantees predominant in the criminal law process, the hearing procedure is basically considered as "administrative"; and like the weight of authority, any strict analogy to civil, criminal, or juvenile law is rejected.

Any member of the University community can file a complaint against a student with the Judicial Council or its delegate. This complaint must be written and is usually on a form provided by the Judiciary. A copy of the complaint will serve as "notice" to the student that an allegation of a regulation violation has been filed against him in the Student Judiciary.

The complaint must state the alleged factual circumstances and the specific University Regulation which the student allegedly violated. The Judiciary Office then assigns the case to an appropriate court and sets the date, time, and location of the hearing. Notation of this assignment is usually placed on the complaint or is attached thereto.

The notice of charges or complaint is then served on the student-defendant either personally or by certified mail. If served by certified mail, it is sent to the last address listed by the student-defendant with the University. The certification of personal service or the certification of delivery or attempted delivery by the Postal Service indicates the date of official service; however, avoidance of service by refusal to accept certified mail will not act to delay or postpone the hearing. Service must be perfected at least seven days prior to the hearing of a major infraction (possible suspension or expulsion) and three days prior to the hearing of a minor infraction (no possibility of suspension or expulsion).

Along with the copy of the complaint and notice of hearing, a copy of the current *Student Handbook* with the University Regulations and the *RPRSJ* is served on the student-defendant. A form letter accompanying this service advises the student of his rights and

responsibilities before the student courts and sets forth a format of the procedure under which his hearing will be held. This letter further refers the student-defendant to the *RPRSJ* for a more detailed set of procedures. This letter contains a statement to be signed by the defendant and returned to the court at the time of his hearing attesting to his understanding of the charges and procedures.

Either of the parties to a hearing may, for good cause shown, request a continuance of the case. Continuances may be granted for any number of reasons. Some examples include the conflict of the hearing with a scheduled class or examination, inappropriate time for preparation of the case or defense, criminal and/or civil action that is pending and will be resolved in a reasonable amount of time. The case will not be continued indefinitely, and during the continuance the defendant is precluded from securing a transcript or graduating.

These rules also provide the defendant with limited rights of discovery. He may request a list of persons who may be used to testify or present evidence against him. The advocate of the case is then required to furnish such a list, and witnesses not appearing on this list will not be allowed to present testimony at the hearing. Presently, this provision of the *Rules of Procedure* is considered weak and barely provides the essential processes necessary. Consideration is being given to strengthening this title.

Either party to the hearing, or the court, may request the Judicial Council to compel another member of the student body to be present at the hearing. Only under unusual circumstances, and for good cause shown, will a justice of the Judicial Council order the summons of such a witness. Failure of any witness to answer a summons and appear in the court at the designated time may result in "contempt" charges being brought against the absent student-witness.

Procedures are provided for a form of "interim suspension." This procedure can only be used under the most unusual of circumstances. Under this procedure an immediate hearing is held before the Judicial Council in which the University must show that certain court cases are pending against the student and that the student-defendant presents "a clear and present danger to the University of Georgia, its students, its faculty, its administrative personnel, or its property . . . [should such a case be shown] the Judicial Council may order the suspension of the student-defendant until such time as his case or cases may be heard [in a full hearing] before the courts of the Student Judiciary."

Under conditions identical to those for an "interim suspension" the Judicial Council may restrain the enrollment of a former student. In both circumstances, the defendant is served with notice and allowed to present a defense and cross-examine witnesses.

Hearings are afforded to all students who have been charged with a violation of a University Regulation. These hearings are before the various all-student courts of the Student Judiciary. The University Regulations, the *RPRSJ*, and all information concerning the type and form of hearings are printed in each year's *Student Handbook*. This *Handbook* is available to each student when he registers at the University.

Although no authority guarantees that students have the right of a "trial by jury" or "peer judgment" in disciplinary proceedings in institutes of higher education, the composition of the various student courts parallels a "jury trial" system and does afford "peer judgement" of the offense. The cases are heard before courts composed of three to seven student justices. One of these justices presides over the hearing and is responsible for the order and flow of the proceedings. The other justices (two, four, or six, depending upon the court) would be analogous to a jury. All the justices and defendants are students; thus, the concept of "peer judgement" plays an important role—with those serving as "judge and jury" coming from the same "peer group" as the individuals "on trial."

To facilitate the hearing of several cases that arise from the same actions or incidents, the hearings of more than one student-defendant may be held jointly. The joint hearing must be requested by either one of the parties to the action or the court and must have consent of all concerned. This enables the court to determine more precisely the degree of participation of each defendant and to adjust the disciplinary measures according to each defendant's individual participation.

The hearings of the various courts are normally closed. All hearings will remain closed unless the student-defendant requests that they be open to the public and the court grants this request. As with all records of every hearing, the Judiciary regards the hearings of and any disciplinary action against a student to be confidential. The Judiciary feels that the private rights of the individual far outweigh any public desire to know a particular outcome. A "closed" hearing is only open to the members of the court, the accused student and his counsel, the advocate, and any witness who might then be presenting testimony.

The system is not purely adversary. There is an advocate who usually represents the University interest. There may be a defender who will represent the defendant's interests. However, the court also plays an active part in the hearing by asking questions of all parties and witnesses appearing before it. The hearing might properly be called "questionary" rather than "adversary" in form.

The advocate carries the burden of proof. The defendant is presumed innocent until the advocate affirmatively shows otherwise.

He must show by "a preponderance of the evidence" (or "clear and convincing evidence") that the defendant is guilty. The only exception to this required quantum of evidence is when a disciplinary measure of expulsion is recommended. Under this exception, the finding of the court must "be supported by proof beyond a reasonable doubt."

At the hearing, the defendant may enter a plea of guilty, not guilty, or nolo contendere, or he may enter no plea and have the court enter a plea of not guilty in his behalf. Regardless of how the defendant pleads, the court will conduct a full hearing to determine guilt or degree of guilt. The mitigating and aggravating facts surrounding the incident play an important role in the determination of appropriate disciplinary measures, and the court will insist on being allowed to determine all the relevant facts leading to the incident.

During the hearing the defendant is afforded all "rights" consistent with procedural due process and in the interest of fundamental fairness. He has the right to remain silent and have no inference of guilt drawn from this silence. However, should he appear as a witness in his own behalf and make a sworn statement, he may be cross-examined. If he declines to answer any question in the cross-examination by the advocate or court, "the court [is allowed to] draw whatever inferences it deems appropriate from such refusal."

The defendant has the right to be assisted or represented by counsel of his choice (lay or professional) before, during, and after his hearing. To this end, a special program of the Student Government Association, the Defender/Advocate Society, will furnish a student defender to any student appearing before the Judiciary who requests it. Either the defendant or his student defender may present evidence or witnesses in his defense, to establish innocence, show mitigating circumstances, or rebut the advocate's witnesses or evidence. The defendant also has the right to confront all witnesses presented against him and to cross-examine the same.

The "rules of evidence" applicable to the hearing before the courts of the Student Judiciary are simple. Formal "rules" as might be required before courts of law are, to a large degree, rejected and are considered not applicable. The court will admit hearsay evidence but will, upon notice, consider it as hearsay, as distinguished from direct evidence. Affidavits and written statements will also be accepted by the court "for good cause shown . . . in the most extraordinary circumstances. The court[s] [place] the highest value on confrontation and cross-examination."

Any record or assertion that shows the defendant had a previous case adjudicated by a court of the Student Judiciary is inadmissible to prove a defendant's guilt. However, once a determination of guilt has been reached by the court, it may consider this prior record in

determining appropriate disciplinary measures. The court may only consider evidence properly presented at the hearing, and any *ex parte* consultations are strictly forbidden.

The only evidence that is absolutely not admissible before the courts of the Judiciary is evidence obtained from a student's dormitory room or other living quarters without his permission or not under the authority of a search warrant. Although it is a well recognized fact that University officials may enter dormitory rooms without a search warrant for disciplinary reasons, the Judiciary considers the institution's rights in this area subordinate to the individuals' rights to freedom and privacy.

Although a hearing is afforded in each disciplinary case, the defendant is not required to be present at the hearing. The defendant may be solely represented by counsel at the hearing or may not be represented at all. Even if the defendant does not attend the hearing and is not represented, the court is not precluded from making a decision and assessing disciplinary measures. Once a "clear and convincing case" has been presented by the advocate, the court may appropriately discipline the defendant "as though he [had] presented his defense." Likewise, the court may at its discretion dismiss a case if the advocate fails to attend and present a case or file for a continuance.

The Student Judiciary is required by the *Student Body Constitution* to make a complete record of every serious action. Pursuant thereto, the hearings of the Main Courts (i.e., on major violations and appeals) and of the Judicial Council are recorded on tape. Such a record is not required of Campus Court and Traffic Court cases unless the defendant elects to cause a record to be made at his own expense. For the protection of the defendant, no other records of the hearing are permitted to be made by any other person.

After the hearing the court will deliberate on each case individually. They are prohibited from receiving any additional information, *ex parte* or otherwise, and must make a two-step decision. Upon the evidence and testimony properly presented at the hearing, the court must first determine whether the defendant was guilty of violating a University regulation. They must determine from this evidence and testimony what the factual circumstances surrounding the actions were and whether these facts and actions constituted a violation.

If the defendant is found not guilty, the court decision process is ended; and they agree and state their findings in their written decision. However, should the court find the defendant guilty, they must then determine an appropriate disciplinary measure to impose. The disciplinary measure is assessed on the basis of the severity of the infraction, mitigating circumstances, and the degree of participa-

tion and prior record of the individual defendant. The courts strive to make the disciplinary measure relevant both to the individual defendant and to the community in respect to the violation. In doing this, they must take into consideration the amount of "social harm" which has been done in the community.

The decision of the court is written and contains the plea of the defendant, the finding of guilt or innocence, the facts the court found to be a true accounting of the incident, and the disciplinary measures. In addition, any dissents will also be noted, and the court may set forth its rationale and reasons in the form of an "opinion." This decision is then served on the defendant in the same manner as are complaints.

If a student receives an adverse decision from a lesser court, he may file a written appeal of that decision within a specified time period. The appeal may be based on procedural defect or error in the lower court case or on other grounds. It will be assigned and considered, usually by the next higher court.

The tape recording of the lower court hearing, if applicable, will have been maintained for a period equal to three times the time allowed for appealing the decision of the case. Once an appeal of the case is filed and if such appeal is based upon some part of the record, the tape recording of the hearing is transcribed. This transcript is used in conjunction with the written appeal of the party, the lower court record, and any writings filed by the opposing party, to determine if an appellate hearing will be granted or if the appeal will be decided solely upon the record.

If there is an appellate hearing, the record may be enlarged. Although the procedures only afford a right for the parties to state their contentions, the court may allow new evidence to be admitted or additional testimony to be given.

On the initial record or enlarged record, the appellate court may decide to affirm, modify, or reverse any part(s) of the lower court's decision. The court is empowered to impose an equal or lesser disciplinary measure of either a like or different kind. However, under no circumstances may any reversal or modification be to the detriment of the defendant.

The advocate in a case may also file an appeal. However, an appeal by an advocate may be to the Judicial Council only. Again, the appeal must be in writing but may be made only in order to establish a ruling by a higher court. The appeal would follow the same procedure as would an appeal by a defendant, except that the Judicial Council would be precluded from reversing a finding of "not guilty" or from imposing disciplinary measures in excess of those assessed by the lower court.

The appellate court delivers its decision in writing either by

completing a form or by issuing an "opinion" or by doing both. The decision is served on the defendant either personally or by certified mail. The optional opinion which may be issued contains the reasons and rationale for the court's specific decision as well as the modified facts found to be an accurate picture of the incident and the modified disciplinary measures, if any.

If a probated suspension, suspension, or expulsion is recommended as a disciplinary measure and the defendant exhausts his appeals within the Judiciary, the defendant may appeal his decision to the Dean of Student Affairs. This appeal must be in writing and filed within five days of the receipt of the Judiciary's final decision. The Dean of Student Affairs may hold a hearing on the case; and if he upholds the decision of the Student Judiciary, the student may within five days appeal in writing to the President of the University. The President will appoint a committee of five faculty members to review the appeal and make recommendations to him.

Should the student receive an adverse decision from the President, he may within ten days file a written appeal with the University System Board of Regents, who shall issue a final and binding decision within the next sixty days. Should any of the appellate officials or bodies beyond the Judiciary reverse the Judiciary's decision (of probated suspension, suspension, or expulsion), "then the Judicial Council shall determine what alternative disciplinary measure(s) shall be imposed."

Should the Judicial Council so choose, it may waive the hearing of any case or cases before the courts of the Judiciary. Although there is no situation foreseen where this particular procedure would be utilized, should it be, the case or cases will be heard by a committee composed of two faculty members appointed by the University Vice President for Instruction, and four students selected by the Judicial Council and chaired by the Dean of Student Affairs or his delegate. The students on this committee are selected twice a year and may not be active participants in the Student Government Association.

There are other provisions of the *Rules of Procedure* which pertain to the Judicial Council's "in-house" function as the judicial arm of the Student Government Association. These provisions are not concerned with campus disciplinary hearings, as the term is normally applied, and therefore will not herein be discussed.

The *Regulations* of the Student Judiciary primarily define formal, internal procedures that will be followed by the various courts. Briefly they outline (1) how the RPRSJ shall be promulgated and published, (2) the policy concerning the handling and confidentiality of the courts' records, (3) quorum and vote requirements of the courts, (4) reassignment procedures, (5) how "contempt" is handled, (6) requirements on disqualifications and dissents, (7) oaths to be

Summary

In summary it can be seen that the Student Judiciary is a young system of all student courts handling all cases of disciplinary action on the University of Georgia campus. The system operates under a formal set of procedures which provide at least the rudiments of due process and in many areas exceed these requirements.

Proceedings of this conference prepared by

Editorial Services, Department of Conferences
The University of Georgia Center for Continuing Education
Athens